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Hostage Case: Closing Statement

International Military Tribunal

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Official Transcript of Military Tribunal V, Case VII in the matter of the United States of America against Wilhelm List, et al, defendants, sitting at Nurnberg, Germany on 3 February 1948, 0930, Judge Wennerstrum presiding.

THE MARSHAL: The Honorable, the Judges of Military Tribunal V. Military Tribunal V is now in session. God save the United States of America and this Honorable Tribunal. There will be order in the court.

THE PRESIDENT: Mr. Marshal, have you ascertained that all the defendants are present in the court?

THE MARSHAL: May it please your Honors, all the defendants are present in court.

THE PRESIDENT: It was my understanding that the prosecution was to present their argument at this time. Are they ready?

MR. RAPP: If your Honors please, the prosecution is prepared to offer its closing argument at this time. I would merely like to make one request for the record. I have checked our files and there are still a small number of photostatic copies in the hands of the defense counsel which have not been returned. I will give Dr Laternser during the recess a list of those numbers and I ask that you be kind enough to return them as soon as possible.

PROSECUTION'S CLOSING STATEMENT
Case No. 7

It is a challenging and formidable task for any advocate to sum up a record of almost 10,000 pages in a trial which has lasted for almost 7 months. When the panoramic events of several years of military and political history in four different nations are the subject matter of a judicial proceeding, when nearly 700 Prosecution documents - orders, reports, war diaries, photographs and even films - are introduced into evidence, when 50 odd witnesses have personally appeared before the Tribunal and more than a thousand by affidavit - then in summation one can do little more than outline in incomplete highlight the contents of this sordid and depraved text.

Many things may be said in future days about this trial. Noone enjoys the process of being tried and judged, and it would be too much to expect from the defendants praise of the fairness and detachment with which this litigation has been conducted. But it must be obvious even to them that they could not have found a more dispassionate forum anywhere in this world.

No matter what might be said by history about this proceeding, of one thing we can be sure. No fair-minded critic may ever say that not all was said in these defendants' favor which might have been said.

It has been somewhat more than a year since the International Military Tribunal handed down two historic decisions involving the criminal responsibility of high-ranking officers of the German Army for the outrages of German troops during World War II. In one, Keitel and Jodl were held to be as guilty as Goering and Ribbentrop for the aggressive acts and wars, with their inevitable consequences, that mark the period of German hegemony in Europe. In the other, it was held that the group of military leaders indicted as the German General Staff and High Command was too amorphous a collection to be dealt with as a group or organization. But in commenting on the evidence concerning the guilt of individual German officers the Tribunal made this clear and unequivocal pronouncement:

"They have been responsible in large measure for the miseries and suffering that have fallen on men, women and children.

"Many of these men have made a mockery of the Soldier's oath of obedience to military orders. When it suits their defense, they say they had to obey; when confronted with Hitler's brutal crimes, which are shown to have been within their general knowledge, they say they disobeyed. The truth is they actively participated in all these crimes, or sat silent and acquiescent witnessing the commission of crimes on a scale larger and more shocking than the

world has ever had the misfortune to know. This must be said.

"Where the facts warrant it, these men should be brought to trial so that those among them who are guilty of these crimes should not escape punishment!"

By filing the indictment here, the prosecution was in effect carrying out the mandate of the International Military Tribunal. The defendants in the dock all fit the description of those officers whom the International Military Tribunal believed should not be allowed to escape the consequences of the vile acts which they either fathered, furthered or allowed to be carried out by their subordinates without a murmur of protest.

Since these crimes all occurred either in territory where active fighting was taking place or in territory which was being occupied by the German Army - Since, in a word, they took place in areas where the German Army constituted the only real source of political or military power and where the only organizations of any kind were either directly or ultimately controlled by the Army - it is only to be expected that the nature of these criminal acts follows a more or less uniform pattern. Indeed, it would be surprising if this were not the case. Most of these defendants, as has been said, served on the Russian front before being transferred to the Balkans. One does not ordinarily expect to see a total change of character and habits of thought effectuated by an individual's transfer from one place to another, especially if he serves in the same capacity in both places.

Further, the nerve center of the entire German Army was in Berlin, and German troops, wherever they were stationed, were influenced to a certain extent by the broad policy directives which issued from the OKW, so that one would expect to find, as in the case of any Army, a certain uniformity of policy and, within a broad framework, certain accepted ideas and methods of action. The defendants, of course, seize

on this unifying direction and attempt to balance on the pin point of the OKW a whole absurd inverted pyramid of argumentation to the effect that most of the indefensible acts committed by their troops and auxiliaries can be laid at the door of the OKW, and that they, who were mere Lt. Generals and Colonel Generals and Field Marshals were completely stripped of any discretion whatever. This tendency to minimize their own importance is a characteristic which does not appear in their biographies prior to the date the indictment against them was filed.

We will deal with this newly-developed self-abasement presently. What is pertinent for the moment is that this identity of personnel, especially in the higher ranks in various theaters during the course of the war, plus this centralized direction of policy reduces the number of legal issues to be considered in this litigation.

Especially in the case of the execution of hostages is the legal issue simple and clear. The prosecution takes the position that the killing of a civilian whose only proved offense is that he or she lives in the neighborhood of a place where some unidentified person did something which displeased the German occupation power, is simply murder, no more, no less. This seems to be a principle which is utterly indigestible to the Defense.

We might say parenthetically that it is rather amusing that they, on the one hand, can argue with apparent seriousness that it is perfectly legitimate to drag a man out of his house, stand him up against the wall and shoot him without even asserting that he is guilty of anything, and yet on the other hand, with an equally straight face, they are able to quiver with indignation at the outrage on their private rights which was perpetrated when they were relieved of their medals by some souvenir-collecting GI in 1945. But this is only one of the many spectacles of moral acrobatics to which we have been treated in the course of this trial.

And the factual issues are really little more complicated. Lifted

out of the morass of detail with which the record is deliberately and unnecessarily encumbered, the case is impressive in its simplicity. The prosecution has had no trouble establishing that the German Army carried out executions of innocent hostages and other savagely disproportionate reprisal measures, that it killed prisoners of war of lawful belligerents by the thousands, and that it participated in the round-up and incarceration in concentration camps of the Jews, Gypsies and other groups classified as inferior by the philosopher friends of Hitler. It was easy to show that the Army often was used as a uniformed press-gang to shanghai foreign workers for the German war machine.

The only complication has arisen in showing where these men were and what positions they held at a given point in time. In order to do this, we have had to go up and down chains of command like so many squirrels. We have had to go into the question of temporary absences from duty caused by sick leaves, holiday leaves, emergency leaves and every other sort of furlough recognized by the German Army.

The accuracy of self-serving personal diaries and prejudicial affidavits of orderly officers with amazingly unerring memories is somewhat more than questionable. But this defense causes us little difficulty. The crimes perpetrated were on so enormous a scale and so continuous in time that there is more than enough to go round for each defendant. Even making allowance for a few days' or weeks' absence from headquarters means at best but a slight deduction from a still staggering totality. The major characteristic which this proceeding has in common with all of the other war crimes trials heard here in Nurnberg is that the Prosecution's case is based principally upon captured records of unchallenged authenticity which these very defendants, and their closest subordinates and collaborators themselves prepared, unwittingly and dispassionately enough, in the ordinary course of their business of running a war. Ordinarily, in a criminal case, documentary evidence plays a minor role. Most of the proof consists of the oral testimony of the persons who were present or near by when the crime was committed. But for the Prosecution to prove by

oral testimony all of the murders and arsons and unlawful arrests and deportations committed by the agencies which these defendants directed was quite impossible for a number of reasons. In the first place, a person charged with a crime is ordinarily tried within a fairly short time after the act is committed. In a friendly country where the majority of inhabitants are on the side of the law and the wrongdoer is an outcast, the latter will, in the usual case, be readily apprehended. But it took several years before any one German general could be called to account for atrocities committed by his troops in the occupied territories of Europe. The bulk of the criminal acts which have been the subject of this litigation were committed between 1941 and 1944. The lapse of time and the press of events which occurred subsequent to their commission in themselves made it impracticable to attempt to prove the commission of these acts by oral testimony.

Further, in the normal criminal case only one crime, or at the most two or three, are charged against the defendant; and even if more than one criminal act is involved, all of the acts will at least have taken place within a reasonably small area. The courts of one locality are generally spared the task of trying persons who are charged with having committed crimes outside its usually restricted borders. Here, on the other hand, we are dealing with a series of deeds which are only limited geographically by the perimeter of the German Army's territorial conquests. It is not even entirely accurate to use the term 'series', because some of these crimes occurred simultaneously in different parts of Europe. List and Foertsch, for example, were killing hostages in Serbia at the very same time when Kuntze, Lanz and Leyser were executing commissars in Russia.

Finally, in the conventional murder case the Prosecution is usually able to find someone who was in the vicinity of the place where the crime was committed and who lived to tell the tale. Frequently, the murders which form the subject matter of this litigation were committed in such a way that this is not possible. When twenty hostages were marched out of a camp, stood up against a wall and shot by German troops, it was unlikely

that anyone except the German troops actually witnessed the scene and lived to describe it.

The proof of the commission of a criminal act by documentary evidence has certain advantages. It eliminates uncertainty and avoids the hazards of human frailties which living witnesses are heir to, such as poor memories, mistaken identifications and good or bad demeanor on the witness stand. It enables the Prosecution to be more detached and reduces the number of controversial factual issues.

But unfortunately, though documents have some advantages, they are not entirely satisfactory. The dry and dull figures of hanged hostages, shot partisans and helpers do not and cannot reflect the destroyed homes, shattered hopes, the disillusionment and misery and pathos that lie behind them. The human mind - perhaps fortunately for our own ultimate well-being - is capable of absorbing only so much tragedy. If one single murder is brought into sharp focus we can take it in, comprehend and be moved emotionally. But when crime is piled upon crime, as has been done in this case, we are in danger of losing our sense of proportion, of allowing the meaning to blur and our moral judgment to become numbed and ineffectual. It is only by considering a cumulative effect that one can shake off the anesthetizing influence of these documents upon one's reason and one's sensibility.

Recorded evidence is handicapped in another respect - documents cannot talk back. They cannot get on the witness stand to annihilate some flimsy explanation, to correct some obvious misinterpretation, or to contradict some outright lie. To the extent that the Prosecution's case is based on documentary evidence, the defendant always has the last say. We can prove that a defendant ordered a given excess to be committed and we can prove that it was committed as a result of his order, but we cannot prove that the defendant did not read the order which he signed or that he did not mean what he said.

But the Prosecution's case does not rest entirely on documents.

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Despite the difficulty of seeking out and transporting witnesses from the countries where these crimes took place, the Prosecution managed to

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produce some -- a Yugoslav, five Greeks and two Norwegians. They were unsophisticated folk of the laboring classes who simply described what they had seen done by German troops under the command of these defendants. It is unlikely that their memories were inaccurate. When a man sees practically all of his fellow villagers, including a good many members of his own family, murdered before his eyes, it is probable that the incident will make a sharp and indelible impression on his mind.

Though the German firing squads missed scarcely a man in Kragujevac during the three days that no Serb will ever forget, somehow they failed to kill Zivojin Iovanovitch. He lived to relate that 2300 of his fellow townsmen were rounded up, marched off and sent to their deaths in the last of the three 100:1 reprisal executions that make October 1941 a blemish on German arms that can never be erased.

By sheer good fortune, Stephanos Pappas was able to give an eye witness account of the burning of his village of Konnenos and of the indiscriminate slaughter of his friends and neighbors. And in what must certainly be the most miraculous and breathtaking of all escapes, Takis Sipliopoulos told in quiet and subdued detail the story of his own execution. Had one of Felmy's executions not chanced to omit the crucial coup de grace, one might never have known of the massacre at Kalavritas.

The Prosecution also used four German witnesses. These men were grilled on cross-examination with particular severity, but with negligible profit. It may be that one reason those witnesses stood up so well was that they knew what they were talking about in the first place.

General Folber certainly knew whereof he spoke when he discussed the nature and purpose of reprisal measures; Bach-Zelewski had more than enough experience to support his conclusions on the subordination relationship of higher police and SS leaders to Army military commanders;

and General Ferdinand Jodl demonstrated some courage in violating caste loyalty to denounce his one-time commander-in-chief for militarily unnecessary devastation in Norway. Significantly enough, in spite of the self-proclaimed opposition to National Socialism of every last defendant in the dock, it remained for the Prosecution to turn up, in Willy Finger, the only genuine anti-Nazi who appeared in court during this entire case.

Oftentimes German soldiers, not anticipating subsequent capture and search by the enemy, roguishly photographed their own gruesome work. A number of these photographs were introduced by the Prosecution. Can he who had once seen them ever forget the stark horror of their reality: bent figures poised on the edge of a shallow ditch with the raised rifles a moment before the command to fire; the brutal beheading with an axe -- in four separate scenes -- of a captured partisan; the scattered bodies at Sabac and the German soldier calmly documenting the carnage; the grinning Army troops and the burning thatched village in the background; the bodies grotesquely hanging from street poles along the main street in Belgrade; and the revealing humor of the postcard photographer of three men hanging from a tree and the perverted caption, "Trees in bloom in Serbia, Spring 1941."

But notwithstanding the films on Greece and Norway and the photographs and witnesses from Yugoslavia and Greece, the Prosecution has necessarily been forced to rely upon the verichrome records, orders and communications of the German Army itself in order to prove precisely what the German Army did. These records were kept with no thought of damning or of exculpating either their authors or their recipients. They are the most trustworthy evidence of the events to which they relate that can be imagined.

Such is the general character of the Prosecution's proof. What has the Defense adduced to meet it? Principally, their evidence has consisted of disquisitions by the defendants themselves. We will take up

the general burden of their song when we discuss their common defenses. They have also brought in a number of witnesses. Most of these defense witnesses have been former subordinates of the defendants, whose self-interest have been former subordinates of the defendants, whose self-interest and bias is so palpable that it merits no extended discussion.

General Hoelter and General Vogel are but two examples who come readily to mind. Hoelter, Chief of Staff of the 20th Mountain Army during the evacuation of Finnmark, might well have found himself in the dock alongside his Commander-in-Chief charged with complicity in perpetrating the very same crime. And Vogel's credibility -- aside from the fact that he was a corps commander under Rendulic during the same operation -- is clearly indicated by the fact that all of his testimony about the piety and modesty of the defendant Rendulic was squarely contravened by the entries which the witness had made in his own personal diary during the war.

There was also Dietloff von Winning, the ubiquitous supply officer not only of the 12th Army but of its successors Army Groups E and F, who appeared on behalf of all three of his former superiors, List, Kuntze and Foertsch. Though he had never commanded troops and never smelled powder, von Winning was an authority on everything from objects of art in the White Castle in Belgrade to the number of calories required to keep a Greek hospital patient from dying of malnutrition. Though he knew all about the death of the German members of the 521st Signal Regiment, he could not recollect any action on the part of the German troops in reprisal because retaliation measures were outside his sphere of activity. And in his own orbit of work he could not possibly recall furnishing concentration camps with rations or other supplies.

Dr. Gerd Feine was called to testify concerning the capitulation agreement signed by Germany and Yugoslavia towards the end of April 1941. Dr. Feine got off to a shaky start by confessing, of all things, to having been extremely well treated during his recent trip to Yugoslavia

in connection with an investigation of the work of the German Legation in Belgrade prior to the war. Dr. Feine stated that Cincar Markovic, the former, and deposed, Foreign Minister of Yugoslavia, signed the capitulation agreement on behalf of the Yugoslav Government. Oddly enough, King Peter, as well as Prime Minister Simovic, who was not only a general in the Yugoslav air force but also Commander-in-Chief of the Yugoslav Army, had already left their country for England and could not accept Field Marshal von Weichs' cordial invitation to enter into contractual relations. Dr. Feine talked about a mysterious power of attorney which Simovic had allegedly given to a General Kalafotovic, who in turn was gracious enough to pass it on -- apparently without so much as a by your leave from Simovic -- to power-conscious Markovic. This whole transaction -- is clothed in deepest obscurity. But what really makes the whole suspicious structure collapse is the fact that Dr. Feine, though present throughout the entire capitulation proceedings, never actually saw the magic document which Markovic offered as his authority to transact the business of surrender in Simovic's place and stead.

Friedrich von Sidow allowed the prescribed form of oath to be administered to him without any spoken word of protest though, judging from his testimony, with a good many unuttered reservations. Like the rest of the defense witnesses, he too did no German evil, saw no German evil and heard no German evil. He knew only about vicious attacks by partisans in Serbia in 1941; that he did not know by which partisans and never bothered to ask did not appear to strike him as at all unusual for one who, like he, was a major in the German Army. Only 300 Serbs, not almost 1800 as the captured documents show, were killed at Kraljevo, if you believe his testimony, and that only because 300 Germans had been killed in previous attacks. And even the 1:1 retaliation taken was not for attacks simply at Kraljevo but, to be sure, for attacks which had occurred all over Serbia. Though Sidow claims he was

in Serbia throughout October 1941, he never heard the slightest rumor about three large German mass executions at Valjevo, Kraljevo and Kragujevac. He knew nothing at all about the execution of hostages, about concentration camps or about villages burned in reprisal. Indeed Mr. von Sidow's sense of honor was outraged at the mere suggestion that such had occurred. His parting answer can scarcely have passed unnoticed: no, he said, he was not joking, he really had been in Yugoslavia in 1941.

Two other "star" witnesses were the self-styled Balkan experts, both longtime members of the Nazi Party and co-followers with Rosenberg and Streicher of the muse of history. One of them, Dr. Rudolf Ibbeken, had never taught or been taught a single course in Balkan history, he did not speak Serbo-Croat and he had been in Yugoslavia the extended period of six to nine months. He demonstrated his comprehensive grasp of the intricacies of his special field by being unable to answer questions about Balkan personalities which a sixth-grade student in good standing could have covered without great difficulty. Considerably embarrassed by Dr. Ibbeken's ignorance, the Defense produced a slightly more informed Balkan expert in the person of Professor Georg Stadtmueller -- a man so filled with regard for the triumph of international law that even if his country were invaded by an aggressor, and his relatives and friends killed through reprisal actions, even then his deepseated concern for the majesty of law would have restrained him from taking any hostile actions against the enemy occupier. The convincing effect professor Stadtmueller made with this personal confession was dissipated somewhat by the unobjectivity of his conclusion that the Balkan nations had made no recognizable contribution to European culture. Yet one ought not to deal too severely with professor Stadtmueller's testimony. On more sober reflection he did concede, however grudgingly, that yes, the Greek-discovered concept of democracy was something of a contribution to Western civilization after all.

We have talked of the "testimony" of the defendants and of the defense witnesses. The word "testimony" is too charitable: it would really be more accurate to describe what went into the record on direct examination as the depositions of the defendants and their witnesses, because they all took with them to the witness stand reams of paper on which were written all the questions that they were to be asked and all the answers with which they were to respond. So far as these people are concerned, the court can give no more weight to their demeanor on the witness stand during direct examination than it could if they had never come into the courtroom.

In addition, the defense has introduced several bushels of affidavits. A word about these would not be out of place. It was obviously impossible for the Prosecution to call all of these affiants to the witness

stand for cross-examination without prolonging the trial for another six months. We, therefore, attempted to choose a representative cross-section. Out of more than a thousand affiants we selected fourteen and requested that they appear in Court. Twelve of them did. The result was very edifying.

On the basis of their testimony and documents submitted during their examination, it appeared that one group of affiants might either have been assigned their own particular seats in the defendants' dock or else have been immediately arrested for the lesser charge of perjury. Colonel von Harling, the Intelligence Officer of Army Group F, followed the established line in swearing that no Allied commandos were ever executed in the Southeast. This declaration was made just before the Colonel was shown his own handwritten signature on orders which sent three named individuals, and an untold number of other commando prisoners, to the SD for "special treatment" that Harling himself in an unexpected burst of candor admitted it meant liquidation. General Winter was another such witness. Winter, though he succeeded Foertsch as Chief of Staff of Army Group E and later of Army Group F, did not know anything about reprisal ratios. He learned things after the war, of course, but to be perfectly honest, he had to tell this Court that from his recollection of his time in the Balkans he could not remember any such ratios. The Tribunal will remember his sputtering and bewildered explanations when he was shown the document containing notes on a speech that he himself delivered at a conference of chiefs of staff on 9 December 1943 in which a 50:1 hostage ratio for German dead and a 10:1 hostage ratio for German wounded was ordered. Later in that same conference Winter was quoted as having said "unfortunately it is not feasible to behead everybody".

It developed that another class of affiants had absolutely no knowledge whatever on which to base the statements made in their affidavits. General Dehner's chauffeur, was dusting off his desk one day and

happened to notice a piece of paper. He did not know who had written the paper, or what was on the paper, or where the paper had come from, but it was his impression that it had something to do with hostages. On the basis of this he made a statement in his affidavit that General Dehner frequently interceded with agencies which were not subordinate to him when the measures which these agencies took were too severe. Another witness, Hans von Selchow, made an affidavit which contained three paragraphs explaining that the Railroad Security Service was not subordinate to the LXIXth Reserve Corps. On the stand it developed that he did not even know what divisions were in the LXIXth Corps. So far as the Security Service was concerned, he did not know what their duties were, who their commanding officer was, to what extent the activities were coordinated with those of German troops in the area, or whether the Corps or the Railroad Security Service had the greater number of troops.

But there is still a further category of affidavits which differ from those which the Court struck only in that the affiants have not been formally indicted. When one of the defendants here was formerly a Corps commander at the time the Prosecution alleged certain outrages were committed by German troops of that particular Corps, it is a standard practice to produce the affidavits of several of the Corps commander's subordinates who have an obvious self-interest in having this Court find that these outrages were never committed. Still another class of affidavits is comprised of those which eulogize the character and deep religious instincts of the defendants. If any of the defendants ever helped a blind man across the street or petted a dog, the incident is probably described at length in some affidavit as an example of his sympathetic and benign attitude towards the Universe and as proof positive that he could never possibly have done anything unkind. It is true that a casual examination of many of these affidavits will reveal that the affiant has not seen the defendant for 10 or 15 years, but the assertions that the latter is by nature utterly

incapable of doing anything that is not recommended by the Sermon on the Mount are apparently thought none the weaker for that. In one case the affiant even dwelt at length on the fact that one of the defendants had a very moderate appetite because of some stomach ailment. The object of this was apparently to show that the defendant was not immortal.

The question of the credibility of a witness is usually arguable and even a lawyer making a wholesale onslaught on the character of the opposition's proof in the heat of advocacy ordinarily admits to himself that there might possibly exist some ground for disagreement on the matter. But when one witness after another gets on the stand and reads off a series of self-serving declarations from a prefabricated script only to burst like a paper bag on cross-examination and when this process continues almost without exception for seven months, we have no inner misgivings when we make the statement that nine-tenths of what has gone into this record as so-called defense testimony, including the affidavits, is completely unworthy of credence.

So much for the general character and credibility of the evidence produced by the Defense. We turn now to the specific assertions and denials made by way of defense. Since most of the defendants have sought sanctuary in certain common arguments, repetition can be avoided if these are taken up generically before going into the specific use which each individual defendant tried to make of them. If a certain standard defense is invalid on general principles, it evidently is worthless in a particular application.

First, the defendants maintain that the documents do not mean what they say. Several ingenious schemes have been contrived to support this thesis. Among these is the "telegraphic style" argument. According to this, the documents must be viewed with caution and alarm because they contain numerous daily reports which were sent either by teletype or radio and therefore do not possess the same profusion of adjectives, modifying clauses and so forth in which we have luxuriated here for

the past several months. We can appreciate the abhorrence in which these defendants hold a telegraphic style. After having listened to them testify, it is obvious how painful it must be for them to read or hear anything that does not bristle with semi-colons, prepositional phrases, and complex-compound clauses inserted parenthetically into the middle of the sentence just to let the speaker get his breath before he makes his last 400-word sprint to the period. But the defendants profess that the brevity and curtness of these reports leads to ambiguous interpretation. Therefore, they have all testified that these reports are in large measure completely incomprehensible to them. The answer to this is that there were no complaints made about their clarity and meaning at the time they were sent and that they were clear enough to enable the defendants and their subordinates to operate the German Army.

But the telegraphic style argument, handy as it is, will not answer every purpose. When a daily report states that "50 men were standrechtlich erschossen" by German troops, there is not much doubt that fifty men were shot and that they were not shot in combat. When another report says "200 people transferred to Zazaviza concentration camp" by a certain army unit, we have no trouble comprehending what happened. Again, when a report reads "400 conscripted workers shipped off to Germany" by a certain Wehrmacht unit the meaning seems to be fairly clear. The defendants dispose of this by the simple device of bringing forth a new set of definitions. They assure us that we are confused if we interpret these messages as meaning what they say. The standrechtliches erschossen does not mean summarily shot, but shot after court martial. "Concentration camp" does not mean concentration camp, it means collecting camp. "Conscripted workers" really means voluntary workers. We have not been furnished with a copy of the dictionary which the defendants use but it would be interesting to know, for example, assuming the term "concentration camp" really did mean

something else, what term should be used if the word "concentration camp" were meant.

If the text of any given report is perfectly unambiguous and if even the lexicographical talent which has been displayed here cannot redefine it into incoherence, the defendants still have several shafts for their bow. Generally, the first one to be shot is the non-subordination argument. In the area of command of each corps and army were stationed certain troops or groups of armed men all of whom were assigned some part in carrying out the German occupation but who were not technically part of the Army. Among these organizations were the Security Police, the Einsatz Commandos and other elements of the SD, the indigenous troops belonging to the armies of the puppet states which the Germans had set up, as well as certain non-uniformed guerrilla groups who were technically not part of any army but who operated in close cooperation with the German forces. In one report after another the butcheries and plunders committed by these auxiliary organizations are described. It can be seen from many of these reports that these atrocities were committed while the group in question was in the course of carrying out a certain operation under the tactical command of or in conjunction with the Army.

In others, it is not specifically shown that at the time these crimes were committed, the organizations involved were acting with the Army in achieving a specific aim but it does appear that they were committing their atrocities within the area of a given Army Division and that they were sending constant reports to that Division on the nature and location of their activities. In both cases, however, the defendants disavow any responsibility for acts committed by these units.

But they go further than this in their disclaimer of responsibility. A third class of reports exists. In these, a given Army division merely reports to its corps headquarters that 50 hostages have been hanged in a given locality within the divisional area. Nothing more

is said. In every case where the daily report does not fix with certainty the company or battalion or regiment which pulled the trigger or tied the hangman's knot, the defendants have argued that these things were probably done by the SS or the SD or the Police or the Ustacha or the Kosta Pecanac Chetnicks or the Ezones or by some other unit which was either not subordinate to the Army or else was subordinate only for "tactical" purposes.

There are several answers to this argument. First, it is the Prosecution's contention that when the 173rd Infantry Reserve Division reports that 50 hostages were hanged and 50 shot on the same day within the divisional area and makes no mention of any of these other organizations in that connection, it is to be fairly inferred that some unit of the 173rd Infantry Reserve Division did the hanging and the shooting. The defendants all deny that this was so. They say that the division reported everything that happened within its area, whether it was done by the division or not, and that unless the report puts the finger squarely on the second platoon of Company C of the 3rd Battalion of the First Regiment of that particular Army Division no responsibility can be fixed.

We submit that this is an affront to common sense. Time and again these defendants have testified to the way that indiscriminate mistreatment of the population and ill-advised executions, arrests and deportations by the police and the SD merely added to the Army's difficulties in keeping the population pacified and subdued. On the other hand they have testified one after the other that reprisal measures properly directed and carried out with sufficient force had a most salubrious and soothing effect on the natives.

Now, assuming what they have said to be true, does it make sense that an Army division, in reporting the execution of a reprisal measure within its area to corps headquarters, would simply report that 100 people had been hanged if it thought that corps headquarters would have

any doubt as to who had done the hanging? If this had been the case, the reports would have been less than meaningless. Corps headquarters would have had no way of knowing, when it received intelligence or the occurrence of one of these massacres, whether to expect calm and tranquility in that particular area for a while or whether to anticipate new outbreaks of rebellion, acts of sabotage and attacks on German troops and installations. Moreover, when a particular action was committed by any of these extraneous agencies, the Division's report precisely said just that. We contend that the only sensible interpretation to be placed on one of these reports made by an Army division in which the carrying out of a reprisal measure is described, is that the reprisal measure in question was carried out by that division, unless some other group is specifically named, and that in fact corps headquarters when it received such a report placed that identical interpretation on it.

But let us, as devil's advocate, assume for the moment that the chaotic system which the defendants claim was actually followed in making these reports and that corps headquarters or army headquarters, when it received the news that a few hundred hostages had been liquidated in the area of a certain division, had no way of knowing who had ordered and carried it out or what its consequences were likely to be. Are these defendants to be exonerated from responsibility for these outrages which were committed by their satellite organizations? When the relationship between these organizations and the Army is examined it will be seen that it was the Army authorities and no one else who were in a position to forbid, avoid and prevent those slaughters from being committed.

First, let us take the relationship between the Army and the Croatian Domobrans. Shortly after the Germans invaded Yugoslavia the so-called independent state of Croatia came into being. As one of the defense witnesses said, "Germany created the state of Croatia." It was and remained a puppet state of the expansive Third Reich. Any doubt as

to this would be quickly quieted by the tone of unctuous servility in which the communications addressed by the Croatian government to the Army occupation authorities were couched. The convenience of establishing such a state from the German standpoint is so obvious that it scarcely need be mentioned. By this simple device the German Army transformed itself from a conquering army stationed in occupied territory to an "allied" force invited to remain in the common struggle. As such, it could step out from under its obligations to the civilian population. As such, it could sponsor the formation of a Croatian army to be used for its own purposes while at the same time masking its own roeking activities behind the facade of Croatian marionettes.

The nature of this parasitic regime, made up of jackals and scavengers who would stop at nothing, not even the murder of thousands of their innocent countrymen, for the few bones which fell from the German stable is so evident that one wonders how anyone can stand in this courtroom, as at least six persons have already done and as three persons will certainly do during the next several days, and hold forth to this Tribunal about the

"independent Croatian Government."

But we are not so much interested in the general nature of the Croatian Government as we are in the relation which the Croatian troops bore to the German commanders. To begin with, the Croatian army was organized and trained by the Germans. Their officers and men, as the documents here show, were screened by the Germans so that all "unreliable elements" could be purged. Once they were trained, they were then equipped and armed by the Germans, and then sent to their permanent stations by the Germans. Now, since all of the "independent state of Croatia" was included in the area of one of the three German Army corps stationed there, and since each of those corps were divided into divisional areas, no matter where the Croat troops were stationed they were bound to be in the area of some German division. Within the divisional area, the Germans indicated where the Croat troops were to be stationed and what their tasks were to be, whether it was the guarding of a bridge by a Domobransunit or the patrolling of a railroad line by a detachment of Ustashi.

Then, from time to time, the Croat units would be notified that the German troops intended to carry out a certain tactical operation. Usually these operations consisted of "mopping up" or "combing out" certain areas in an effort to reduce the activities of the partisans -- either by destroying their hospitals and bases of supply or by arresting all the able-bodied men in the locality. The Croat troops in such an operation were assigned a certain definite role to play in conjunction with the German troops. When the operation was finished, the German divisional commander would then instruct the Croat troops to take up their old stations and resume their railroad

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security activities or whatever else they had been doing.

This is what Rendulic, Dehner and Leyser mean when they say that the Croat troops were not "subordinate" or that they were only "tactically" subordinate to them. It is precisely what Lanz, Felmy and Speidel mean when they correspondingly deny responsibility for the excesses of Greek "volunteer" units. In both cases the evidence is irrefutable that these sets of gangsters were, from start to finish, no more than the uniformed tools and hirelings of the German army. Dehner and Leyser repeatedly protest that they could not order a member of the Domobrans to be tried by a German court martial. In that they may be technically correct -- but neither, for that matter, could they order a German soldier to be tried before a court-martial. Only a divisional commander could do that. But who is so naive as to believe that a divisional commander dictates to his superior at Corps headquarters? The record here shows that the power of the German corps commanders in Croatia was such that they could even remove the Croatian civil officials when it pleased them. It is utterly fantastic for them to say that they could take no measures to curb excesses committed by these Croatian janizaries.

We have singled out the relationship between the Domobrans, which was the regular army of the Croatian "independent state", merely as an illustration. What we have said about them applies with equal force to the Ustascha, the Croatian counterpart of the Waffen-SS. It applied with perhaps even more compelling force to the groups of Serbian non-uniformed irregulars -- the Kosta Pecanac, Danzic and even certain branches of the Mihailovic Chetniks -- who were armed and used by the German Army whenever it suited their convenience. It applies, in short,

to all of the countries in Southeastern Europe in which the Germans set up puppet regimes and used indigenous troops to murder their compatriots. The relationship between a principal and an accessory before-the-fact to murder does not depend on the word "subordination" and the use of that term as these defendants here attempt to apply it to these indigenous troops is as false as the premise upon which it rests - i.e. the myth of the independence of these puppet governments who were installed and kept in power solely at the whim of German arms.

The defendants seek also to escape responsibility by the use of their famous subordination principle for the acts of units of police troops which operated within their areas of command. The witness Korn exploded the theory of the independence of the police troops from Army jurisdiction. According to him, during the 18 months he was in the Southeast the police troops only once carried out an operation alone - that is to say, without the help of the Army. The police troops received their ammunition, transport and supplies from the Army and it was impossible, he said, for the police to carry on an operation of any size or importance without first obtaining the consent and approval of Army authorities. This is fully borne out by what the witness Bach-Zelewski had to say of the close cooperation between the police troops and the first Cossack Division in the course of Operation Arnim. The defendants say that they were not informed of the activities of the police; but the documents show that the police periodically reported to the Army on precisely what they were doing.

The defendants say that they and their Army subordinates protested against the activities of the police from time to time. They may have done so, but that their

protests were not based on any humane considerations was shown by the testimony of one of the defendant's own witnesses, General von Behr, who testified that he as divisional commander objected to the activities of the police only because they were not carried out with enough troops to be really effective: In other words he was not protesting against the severity of the measures taken by the police, but because they were not severe enough. Of further import is the significant fact that evidence of these protests is strangely missing from the captured German Army documents.

The next group which operated within the area of the Wehrmacht command were the Einsatzkommandos of the SD. The defendants now disclaim any responsibility for what these people did and say that they had no idea of their operations and no means of curbing them even if they had known. This, of course, flies into the teeth of the many documents here which show that on most of the large scale mopping up operations carried out by the Army, units of the SD were attached to each Army unit for the purpose of screening the inhabitants, cleaning up the rear area after the Army troops had advanced, taking care of the persons who were arrested and who were subsequently to be transferred either to concentration camps or hostage camps or shipped off to Germany for forced labor in factory and mine. The SD was the most murderous and dreaded organization in Germany, with the possible exception of the Gestapo, and it is understandable that the defendants are a little sensitive when it is pointed out that the German Army and the SD frequently worked in close cooperation. But the proof showed beyond any doubt that close harmony existed between the two organizations and that when the Army had any need for the special services which the SD was so expert in

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furnishing, they joined hands and worked together as on a common enterprise.

Finally, the defendants seek to throw as much of the blame for this complex of outrages as possible on their favorite whipping-boy, the Waffen-SS. Here again it is claimed that the Army had no authority over the SS except in a purely "tactical" sense. One example is sufficient to show how elastic this term "tactical subordination" is, as used by the defendants. The court will remember General von Leyser's description of the partisan attack on an armed truck convoy in Albania, in the course of which three German female employees who were being evacuated from Tirana were captured. From the war diary of the XXIst Mountain Corps we discover that an SS Oberfuhrer has ordered an SS major to burn down some villages in the locality of the attack and to kill the population. The report goes on to say: "The approval of the Corps is still missing. Major Frank asks whether the Corps agrees to the carrying out of these reprisal measures and asks for an immediate reply". Two days later a report shows that the SS Division Skanderbeg is holding hostages, who were presumably seized in connection with this same attack. Still later, we find Corps headquarters directing the SS Division Skanderbeg not to carry out the shooting of 50 hostages, because such an action might jeopardize the negotiations with the partisans for the return of the three German women.

Now, if the SS was only "Tactically subordinate" to the Army, then we can only conclude from this report that the shooting of hostages and the burning down of villages are to be considered as strictly tactical measures. Obviously, the SS would not have asked the Corps for permission to do these things unless it was necessary to obtain

permission from the Army before doing it. This one representative example - an illustration which could be multiplied many score, will suffice.

SS atrocities occurred not in spite of Army opposition but because they were an integral part of, and consistent with, German Army occupation policy. But even when "disciplinary" as opposed to "tactical" jurisdiction of the Army over one of the conventional scapegoat agencies is proved - as was the case with Felmy and the Rosenberg detachment operating within his area of command in South Greece in 1941 - then we are told, surprisingly enough, that "disciplinary" authority is of no particular importance since it refers only to such minor questions as proper dress, military courtesy and the like. Thus when Army commanders have it, "disciplinary" authority is essentially unimportant; but when they don't have it, it assumes proportions of importance limited only by the defendants' endurance and vehemence of speech.

The Tribunal should keep in mind in considering all of these attempts to shuttle the responsibility from the Army to one of these other organizations that we have been told time and again by these defendants and their witnesses that within a given divisional area the division commander was held primarily responsible for everything that happened and that he was the highest German authority there. The same was true of the Corps commanders to an even greater extent. The German Army was always by far superior in numbers, power, prestige and influence to any of the other units which have been mentioned. The fact that the police, the SD and indigenous troops are named in these reports show that the army authorities were kept fully posted on their activities. Without the full

knowledge and consent of the Army these organizations could not have come into a given divisional area at all, much less functioned independently after they got there.

The picture which has developed from the exaggerations made by these defendants in their effort to shift responsibility from the Army to other agencies is completely ridiculous. We are supposed to believe that within any given sector assigned to an Army division; there were all sorts of odd groups - police, SS, the SD, various units of indigenous military and semi-military personnel, and even certain elements of the Wehrmacht itself, such as parts of the notorious Brandenburg Division, wandering around, stumbling over each other, getting in each other's way and working at cross purposes. They would have us understand that these units simply marched over the division area at random, hanging, shooting, burning and plundering without giving the Division any idea who and where they were, what their purpose, and how they were achieving it. Merely to sum up this description is enough to demonstrate its absurdity. If this were actually what took place, then it would have been the Germans much more than the Croats, Serbs, Albanians, or Greeks who were the partisans. The truth is, as we have already shown, that the commanding officers of the Army possessed all of the power necessary to restrain these auxiliaries and they not only had the power but also the duty, since it was they who were primarily responsible for maintaining peace and security within their areas of command. Since they had both the power and the duty to prevent these outrages, it is they and no one else who should be held accountable for their having occurred.

We pass on now to the next excuse offered by the

defendants - that they were ignorant of the commission of these crimes. When they are asked to explain a daily report from one of their subordinate units which mentions the burning down of several villages, or the hanging of a dozen-odd hostages in reprisal for an attack on a truck convoy or a railroad blasting, they say it is very difficult for them to do this, because although this report was made to their own headquarters they did not read it and only saw it here at Nuremberg for the first time. How often have we listened to that enervating chant - "I learned of these things for the first time here in this courtroom."

General Dehner offered as proof of his ignorance the fact that many of these daily reports addressed to his corps from the various divisions which formed it did not show his initials, whereas it was his invariable custom, he said, to put his initials on every such report that he read. On cross-examination, however, it developed that the presence or absence of his initials on a document had little or no bearing on his knowledge of the events described in it because, in the first place, the papers which he initialed were frequently the first drafts while the documents presented in evidence here were the final drafts; and, in addition, because whether he read the report or not made very little difference since his chief of staff had a duty to give him oral summaries of all reports which he did not actually read.

Geitner's testimony on the subject of his initials was even more involved. According to him he had two methods of initialing. In both cases he used the letter "G" but if the letter was "a long cursory 'G'" that indicated that he had seen the order only after his commander had signed it; whereas in the rare instances in which he saw the particular

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order before it went to the commander for his signature, the letter was made in a more precise, formal and soldierly fashion. Following this discourse on calligraphy the number of subjects which had not been brought into this case as a matter of defense was reduced to two - falconry and the occurrence of sun spots - an omission attributable no doubt to oversight rather than to lack of diligence on the part of counsel.

But judging from the testimony of the other defendants, particularly List, Kuntze and Foertsch before him and Felmy and Speidel after him, General Dehner's case was typical. Each in his turn has testified about briefings and the daily morning and evening conferences when the various situation reports from the field were discussed. One of the main purposes of these conferences was to enable the commanding officer to find out from his Chief of Staff, the Ia and the Ic officers, and various other experts exactly what was happening within his area of command.

But it is not necessary to go into a detailed analysis of all the wonders to which we have been treated in the course of the attempts made to bolster these professions of ignorance. These men were the highest ranking members of the German Army within their respective areas. But even if they did not know of this constant campaign of terror and murder of the civilian population being carried out by their troops, reports of which were being sent to their headquarters at least daily, and usually, twice a day, it makes no difference from a legal standpoint. They were charged with the duty of knowing it. It was

It was their business to know what was being done by their troops and they cannot escape the responsibility for these atrocities by saying that they did not bother to read what was furnished them for the specific purpose of allowing them to know. This interpretation of the duty of a commanding officer is not novel. In U.S. v. Oswald Pohl, et al., the court said, "The law of war imposes on a military officer in a position of command an affirmative duty to take such steps as are within his power and appropriate to the circumstances to control those under his command for the prevention of acts which are violations of the law of war". (Tr. 8123). That Tribunal pointed out that the Supreme Court of the United States had already announced this principal in the Yamashita case.

Another popular fable is the sick leave or holiday explanation. This is given in two different situations. In the first one, the defendant formulated an order for some criminal acts, passed it on to his subordinates and then went to the hospital or took a few days' leave. In this courtroom he takes the position that no blame can attach to him if he was not actually sitting in his office at the time the culpable act was carried out. That such an argument is even put forward shows the desperation of the person making it. If a terrorist leaves a time bomb with a 24-hour fuse in a London railroad station and ten people are subsequently killed by the explosion, it is hardly a legal defense to the charge of murder that the man who planted the bomb was in Dublin when it went off. This is precisely analogous to the argument which the defendants make here.

Then there is another situation in which the holiday or sick leave argument is advanced. Here the defendant himself did not actually give the specific order before he left his headquarters. It was given either by his Chief of Staff or by whoever happened to be his responsible deputy during his absence. The defendant, therefore, disavows any

responsibility for the order even though upon his being advised of it, he took no steps either to rescind it, to reprimand the officer who actually signed it, or to forbid the issuance of similar orders in the future.

How one can well imagine the subsequent fate of a subordinate who, having temporarily taken over his superior's duties during a short absence, attempted during that time to issue an order to kill people without having first assured himself that any orders of this kind would meet with his superior's full approval and be ratified and defended upon the latter's return. Yet these defendants seriously argue that every time they went to the hospital or to the homeland for a few days their chiefs of staff or deputies not only issued orders without their knowledge and approval, but indeed issued orders which effected a complete reversal of all policies which had been announced and followed previously. If this had been the case, it would have been necessary for every commanding officer in the German Army to stay awake and alert twenty-four hours a day, seven days a week, in order to insure against one of his subordinate's bringing about a complete shambles every time he turned his back.

This last variation of the holiday-sick leave argument is merely one of a number of means which have been employed in an effort to achieve the same end. The end is not very pretty, but then these defendants are in no position to pay too much attention to aesthetic considerations. The aim is simply to shove the responsibility for these crimes on to their fellow officers in the German Wehr acht. They will first try to place the onus on the police or the SS, but if that maneuver is too far-fetched, they then cast about to find some other German Army officer to bear the blame. As was to be expected, their first choice for the role of scapegoat is generally some officer of lower rank than their own, such as a divisional commander. But if that is not feasible, then as a last resort they say that the responsibility

rests with their superiors. Then does every defendant, be he a full Army or but a Corps commander conveniently place himself in a pivotal position from which he can, as the winds seem to blow, pass criminal responsibility either up or down the military pyramid.

Now this all a ticklish business, of course, and has to be approached with care and circumspection. It is not strategically advisable simply to blame any superior officer who may be lying around handy. After all, the German Army must be vindicated, and that aim cannot be accomplished if all of its high-ranking officers are to be smeared with accusations of participating in the kind of indefensible butcheries that we have heard discussed here. So a technique has been devised to meet the requirements of the delicate situation. In blaming their superiors, the defendants here have been careful to do one of two things: they have either phrased their language in vague, corporate terms by saying that the OKH or the OKW was responsible, without naming particular individuals; or else, if it seemed more expedient to unload the blame onto a specific individual, they have been careful to choose individuals who are dead.

First, take the case in which their subordinates have been selected to bear the responsibility. This excuse is patently based upon a deliberate distortion of the whole concept of military organization, not only as it was known in the German Army, but in every army in the world. When the general of an army issues an order, it is to his corps commanders that he looks for its execution. If the order is disobeyed or clumsily carried out, it is the corps commander who is called on the carpet. Perhaps the order was not carried out because some major general was derelict in his duty. Possibly the fault is really that of some colonel or major.

But an army commander is not disposed to be interested in first causes. It may be that for want of a nail the shoe was lost and that eventually for want of the shoe the battle was lost. But neither the

blacksmith nor the horse is held accountable by the commanding general. He is not interested in hearing that an order miscarried because of the obstinacy or stupidity of a divisional commander. If a corps commander attempted to render such an explanation he would be told nine times out of ten that it was his job to have discovered the divisional commander's inadequacy long before and to have sacked him and replaced him with some more capable person.

This is not only the practical way in which an army operates but it is the only logical way. All armies are pyramidal in their organization. There is not time for an army commander or an army group commander to call a convention of all his divisional and regimental leaders every time he issues an order. The function of the corps is to make this unnecessary. The corps commanders are told what they are supposed to do and there, so far as their superior is concerned, the matter ends. If this were not so, the phrase "chain-of-command" would have no meaning. Aside from the fact that it is more than a trifle cowardly for these men to try to shift the responsibility to their subordinates for having executed orders which these men passed on after they were received from higher headquarters, the whole concept is grotesque.

Then take the case in which they have blamed their superiors. The Prosecution has already pointed out in its brief that the plea of superior orders is no defense at all. We shall not repeat here the abundance of authorities which we have already cited in support of our position on this legal issue. But a few remarks should be made with reference to some of the testimony on the subject.

The defendants themselves have not been consistent in the stand which they have taken on the issue of obedience to superior orders. Several of them are charged with having carried out the notorious Commissar Order. Every one of those has steadfastly denied that troops under his command summarily murdered political commissars in compliance

with that unquestionably criminal mandate. All have admitted having received the order or at least having been apprised of its contents. Now it should be remembered that the Commissar Order was Fuehrer-befehl, which is to say that it was issued by the highest possible authority. Yet the defendants say that they deliberately neglected or refused to obey it because they felt it was illegal, unsoldierly, and inhumane or because they believed it would have the precise opposite effect from that which was intended. In that matter they insisted upon substituting their own judgment for that of Adolf Hitler and Field Marshal von Brauchitsch. Yet the very defendants who have testified in that vein about the Commissar Order have said that they had no right to forbid or discourage the shooting of hostages because hostage executions had been ordered by the OKW.

Another general observation might be made about the testimony which has been offered on the superior order defense. Except for Brigadier General von Goitner, the lowest-ranking defendants in this dock were Lieutenant Generals who commanded between 50,000 and 100,000 troops. Career officers who spent their lives learning their profession, they obtained their rank because in the opinion of their superiors they possessed the intelligence and judgment which the responsibility of such a position demanded. Within the framework of the broad directives given to these men, they were allowed and expected to exercise a wide discretion in carrying out their duties. We could hear testimony until doomsday that a Lieutenant General or a Colonel General or a Field Marshal was only a loud speaker through which the commands of his superiors were amplified or echoed and it would still not be convincing.

If these men had disagreed with the policies which were being executed within their respective spheres of command, whether such policies affected the treatment of the civilian population, the discipline of the German troops, or the political and racial programs behind

the directives handed down from higher echelons, that disapproval would have manifested itself immediately in a hundred different ways. If they were the tools through which the murderous theories of Streicher, Himmler and Hitler were implemented, it was because their compliance was completely voluntary. The criminal liability for what they did cannot be shunted up the line.

A corollary of the superior order defense is the one predicated upon the assumption of the legality of orders emanating from Hitler and the OKW. Every defendant, without exception, has said that when such orders reached him, it never occurred to him to question their legality no matter what the subject matter or how severe the measures prescribed. They argue that there was a multitude of legal experts at OKW headquarters in Berlin and that they could not be expected to doubt that every OKW order had been subjected to the scrutiny of these jurists before it was sent out.

One would have to be credulous indeed to believe that professional soldiers with decades of active service and the experiences of a previous world war behind them were so ignorant as not to know that orders which denied the belligerent status to their enemies, which forbade the taking and indeed commended the execution of prisoners of war, and which established arbitrary hostage execution ratios of 50 and 100-to-1, were in patent violation of every recognized standard ever set by civilized nations for the conduct of warfare. This plea would have no validity as a legal defense even if we believed them. The maxim ignorantia juris non excusat is as well recognized by the criminal codes of the continent as it is by Anglo-American law.

But how can one possibly accept this argument as sincere? High-ranking military judges were readily available at Army and Division, and in Lanz's case even at Corps, headquarters if legal advice had been desired, which it clearly was not. Moreover, none of these very defendants, as they were eager to point out, assumed that the Commissar

and Commando and Military Mission orders were valid, even though they, too, stemmed from the evil triumvirate in Berlin. Nor, on other occasions, when they were anxious to demonstrate their basic humanness, did they hesitate to describe their misgivings about those same hostage, reprisal and band warfare regulations whose legality they insist had to be presumed. Consistency is a word which apparently is not found in their dictionary.

Along with superior orders, military necessity is the most basic of the defenses herein advanced. This defense is almost always yoked together with a long description of what the defendants call "Balkan mentality". We have been told that this peculiar "Balkan mentality" is incomprehensible to the western European mind; that all of southeastern Europe is populated by uncivilized savages who are and were incapable of appreciating the finer things of life such as the presence of 20 or 30 divisions of German troops whose only purpose was to act as missionaries of culture and to protect these helpless people against an invasion by the American, British or Russian "enemy". We have been told that the disappointing response of the Balkan peoples to all the advantages of a German occupation was proof in itself that that occupation was a positive boon to the region. The Serbs, Croats, Montenegrins, Albanians and Greeks have been depicted as having had only one desire -- to murder as many Germans and as many of each other as possible. We have been informed that the racial and religious hatreds which exist between the various groups in the Balkans are so deep-seated and bitter that had it not been for the Germans they would have annihilated each other wholesale. This is the picture of "Balkan mentality" as the defendants have painted it.

From this they go on to say that in dealing with such a situation ordinary measures were insufficient. To a man all of these defendants have testified that in their opinion it was impossible to govern in Yugoslavia and Greece without the use of reprisal measures.

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The execution of hostages, the burning of villages and the shooting of captured partisans was, therefore, a case of military necessity.

The argument of the defense of military necessity is unconvincing here for several reasons. In the first place, it is the prosecution's contention that the plea of military necessity can never be used as a defense for the taking of an unarmed civilian's life, if he is innocent of any hostile conduct against the occupying power. Section 24 of the American Army Field Manual correctly states the accepted definition of that term in international law. It reads:

"Military necessity admits of ---

- a. All direct destruction of life or limb of armed enemies, and of other persons whose destruction is incidentally unavoidable in the armed contests of war."

The emphasis of the word "armed" in the test necessarily excludes from the class of persons whose killing may be justified on the grounds of military necessity persons such as those who were used by the German troops as hostages.

In the second place, it is inconsistent to attempt to defend the same action by the plea of superior orders and also by that of military necessity because the two are mutually exclusive. If an act was committed solely because of superior orders, then presumably there was no military necessity for doing it; whereas if it was done because of military necessity, it would have been done anyhow regardless of the existence or non-existence of superior orders.

In the third place, the defense of military necessity flies into the teeth of all the available evidence here. In addition to the oral testimony of such witnesses as General von Greiffenberg, Bach-Zelewski, and even General Winter, there are among the documents many complaints made by responsible German officers, who pointed out that the technique of reprisal measures had proved to be a boomerang in that it

resulted in a stiffening of partisan resistance in the areas where these measures were carried out.

We need not here go into a long refutation of what the defendants have said about "Balkan mentality". They were not in a position while in the Balkans to get a very clear or detached view of it, any more than the Balkan peoples were able to view from a favorable vantage point what could be conceivably argued to be a unique German mentality. The mentality of the Serbs, the Croats and the Greeks was undoubtedly a source of frustration and bafflement to the defendants, just as perhaps the British mentality was. Whatever the present or future relations between the United States and the Governments of Yugoslavia, Albania and Greece may be, the tenacious and inextinguishable spirit with which these people resisted the German occupation, sustained for two long and bitter years only by their own determination, will always be remembered as one of the greatest demonstrations of courage displayed during this or any other war. Resistance against enslavement has absorbed a good deal of these people's time during the past 100 years. It has been less than a century since the Serbs and Greeks threw off the Turkish yoke, and scarcely more than two decades have passed since those same heroic Serbs battled unaided for almost four years against the armies of the Triple Alliance. The Germans knew this, of course, when they invaded Yugoslavia, but these defendants and their brother officers thought that by applying von Clausewitz's theory of unrestricted warfare with sufficient ruthlessness they could break the spirit of these long-suffering people as even the Turks had failed to do before them. The long record of crimes which have been described at the bar of this Tribunal are the natural result of the practical

application of this method of restoring quiet to the Balkans. It not only failed but it stirred up such a hornet's nest of resistance that tens of thousands of soldiers desperately needed elsewhere were immobilized to do nothing but garrison and police duty -- all because of this obstinate "Balkan mentality".

The contention predicated and the allegedly binding effect of the surrender of the Greek and Yugoslav armies is just as infirm as the other so-called defenses. General Tsolocoglu who signed the capitulation agreement on the part of the Greek Epirus Army was not the commander-in-chief of that Army but only its deputy commander-in-chief. Further, there is no evidence whatever that Tsolocoglu was authorized either by the Greek Government, headed by King George II, or by the actual commander-in-chief of the Epirus Army to sign that capitulation agreement. The defense had not even attempted to prove who signed the capitulation agreement on behalf of the Greek Thracian Army or that that capitulation too was authorized by the Greek Government.

The situation is even clearer in the case of the capitulation of the Yugoslav Army. The surrender agreement there was signed by the former, and deposed, Foreign Minister of Yugoslavia, Cincar Markovic. The commander-in-chief of the Yugoslav forces, General Simovic, who was simultaneously Prime Minister of King Peter's government, not only did not sign the agreement of surrender of the Yugoslav armed forces but had previously fled the country along with the rest of his cabinet for exile in England. In this case not even the deputy commander-in-chief of the Yugoslav armed forces, General Kalafotovic, signed the agreement of surrender to the Germans. So much for the facts regarding the defense

based upon the capitulation of Greece and Yugoslavia.

The legal theory of the defense on this point seems to be this -- when an officer signs an agreement of surrender, even though he is not only not authorized but specifically forbidden from doing so, then it is unlawful thereafter for any of that officer's countrymen under any circumstances to take up arms against the conquering power. If this reasoning is valid, then all of the American forces in the Pacific after April 1942 could have been treated as francs-tireurs simply because General Wainwright, their fellow American, had surrendered on Corregidor. Before the defendants can justify themselves for having refused to accord belligerent status to a particular partisan on this ground, it must first be shown that the partisan in question had formerly been a member of the Yugoslav Army and was, therefore, constructively bound by the surrender agreement. One need not labor the obvious by remarking that no such proof has been offered.

The defense with respect to these capitulation agreements has still a further flaw. It was said that following the collapse of Greek resistance in April 1941, the Greek prisoners were allowed to return to their homes with the understanding that they would not in the future take up arms against the conqueror. Prisoners of war, who are set at liberty on parole, are bound, on their personal honor, scrupulously to fulfill the engagements they have contracted. Presumably one of those engagements which the surrendered Greek soldiers contracted to fulfill, though the evidence is flimsy to say the least, was to never again take up arms against Germany. But even if any evidence of such a parole agreement at the time of the surrender of the Greek forces had been made out by the defense, it would not be binding here for several reasons.

First, prisoners of war may be set at liberty on parole only if the laws of their country allow and there has, of course, been no proof of what Greek law is on this matter.

Furthermore, there can be no paroling on the battle field, no paroling of entire bodies of troops after battle, and no dismissal of large numbers of prisoners by a general declaration. Even if one accepts the scant proof offered by the defense on this point, it can scarcely be doubted that this forbidden type of parole was exactly the kind that the German Army there adopted at the time of the Greek surrender.

In addition, a prisoner of war cannot be compelled to accept his liberty on parole nor is the hostile government obliged to accede to the request of a prisoner to be set at liberty on parole. There has been no proof that the Greek government-in-exile ever consented to or ratified the discharge of captured members of the Greek Army on parole -- even if there was any such discharge on the part of the German Army at that time. The only evidence adduced by the defense would indicate that the Greek prisoners of war were merely disarmed and sent home without further ado to save the German Army the trouble of feeding them.

Further, the conqueror has certain duties and obligations to perform to the conquered even in a case of an unconditional surrender. The making of an unconditional surrender does not free the victor from his obligation to observe international law; and when the Germans commenced their campaign of indiscriminate shootings and hangings of the civilian population, even former members of the Greek and Yugoslav Armies, who had given their individual paroles -- if such there were -- were perfectly justified in using whatever means

they could to rid their country of this plague.

The last of the common defenses is to the effect that since the partisans were not entitled to the status of lawful belligerents, the German Army was not bound to follow the rules and customs of war in combatting them. The defendants themselves have skirted the fringes of some of the subsidiary arguments involved here rather cautiously. For example, none of them has been willing to rest his contention that the partisans were unlawful upon any one ground.

In the face of the German intelligence reports concerning the organization, strength, armament, and location of the partisan units, the names of their officers, the elaborate courier, postal, judicial and governmental administrative systems in force in the large areas under their control, it is hardly arguable that the partisans were not a regular and highly effective military-political-economic organization, which is the basic test for determining whether an enemy group is entitled to the status of a belligerent.

The defendants have realized how feeble it is to maintain that the partisans were not military organized and have fallen back on the completely irrelevant complaint that the designations which the partisans gave to their units, such as battalions, regiments and brigades, did not correspond to the German nomenclature. It is perfectly apparent that in Yugoslavia, for instance, the partisans had a perfectly well-defined chain-of-command which went from Tito down to every company and platoon. If from time to time a small unit of partisans was cut off from the main body of troops to which it belonged and was unable to communicate with them, they were no more disorganized for that reason than were

segments of the German Army which were frequently in the same situation.

It is unnecessary for us to take up here the other subsidiary contentions which have been made - those to the effect that the partisans were not in uniform, did not carry their arms openly, and systematically violated the laws and customs of war. It is enough to say that the evidence which has been produced to support such arguments smells very strongly of ex post facto justification. Time after time the documents mention that the partisans wore uniforms or readily identifiable insignia. The defendants say that this may have been true, but that the uniforms were not standard; that the distinguishing insignia of the Tito and Mihailovitch partisans in Yugoslavia and the EDES and ELAS Andartes in Greece were not identical; that some of them wore parts of German, Italian, British and American uniforms. But what possible factual difference could that have made then, or what legal difference now. The Hague Rules prescribe no standards of sartorial elegance. The object of the rule requiring the use of a uniform is to enable a combatant to recognize his enemy. And in Yugoslavia or Greece it was distinctly understood that any one who wandered around in a uniform had invited himself to become a target, regardless of its cut or color.

The fact of the matter is, of course, that no matter how elegantly the partisans had dressed, they would have been shot upon capture in any event. List made that incontestably clear when he admitted that un-uniformed Kosta Pecanac Chetniks were permitted to collaborate with German troops against the Tito and Mihailovitch partisans and Foertsch was even more forthright when he testified that the German Southeast Command

concerned itself only with considerations of military expediency and not the Hague Rules in dealing with the partisan problem.

One word as to the testimony about partisan tactics. One examines the official reports and records of the German Army in vain if his object is to find descriptions of mutilations inflicted by the partisans. Yet the defendants have produced several pounds of affidavits describing these things in detail. We have tried to reconcile the strange silence in the official reports with this endless recital in the affidavits. The simplest and most likely explanation is that the events described in them also have as their factual basis some paper that was lying on General Dehner's or General Kuntze's or General Geitner's desk that the affiant did not read.

This interpretation is bolstered by the disparity between fact and testimony which occurred in the case of the Instruction of the Communist Party in Serbia for the conduct of band warfare. List, Kuntze and Foertsch testified at length that they had read captured copies of these instructions and that the gist of them was to encourage and incite the partisans to mutilate German prisoners and kill German wounded. Then the defense, peculiarly enough, produced these very instructions from the mass of documents which were sent from Washington. There was not a single word in their entire ten-odd pages which by any stretch of the imagination could have been construed to mean what the defendants testified they themselves had read in them.

MR. FENSTERMACHER: Just one more paragraph, Your Honors.

So much for the common defenses and explanations, which like a loud yet dissonant chorus, the defendants all chanted together. We turn now to a necessarily incomplete and

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undetailed review of the main evidence for and against the individual defendants.

THE PRESIDENT: We shall take our morning recess for 10 minutes.

THE MARSHAL: The Tribunal is again in session.

MR. RAPP: On 6 April 1941, from Bulgaria, Field Marshal Wilhelm List, Commander in Chief of the Twelfth Army launched the German invasion of Greece and Yugoslavia. The campaign was short-lived. Within a fortnight Greece was prostrate and the Yugoslav Army had been defeated. By the end of May, 1941, the strategic island of Crete had also fallen before Germany's armed might.

From that point on, Yugoslavia meanwhile having been carved up and sections parcelled out to Italy, Bulgaria, Hungary, Rumania and the fictitious State of Croatia, it was List's job to manage the German occupation of Serbia and Greece. He was charged with primary responsibility for its success and to that end was given almost unlimited power over the lives of the civilian population. By virtue of Fuehrer Order #31 he was given the famous executive power which meant that under the guise of maintaining "peace, order and security" he could snuff out the existence of the native citizenry at will. He had full authority over all matters affecting the military administration of the entire German-occupied areas of southeastern Europe. Within an area larger than Germany itself his reign was as absolute as Hitler's and the only person in all of Europe to whom he was subordinate was the Fuehrer himself.

List was a potentate who was jealous of any attempt to infringe upon his dominion. He kept the activities of Dr. Gunther Altenburg, who had been sent to Greece by Ribbentrop's Foreign Office to organize the Greek government, under careful observation and incidentally challenged every move the latter made that tended to reduce his own power. It is positively laughable for List now to assert that his authority as Armed Forces Commander Southeast was restricted or crossed by any German agency.

When on 9 June 1941 List was named Armed Forces Commander Southeast, Greece was relatively quiet. There were, however, vague rumblings of disturbances in Serbia though nothing really alarming as yet. No

trouble was anticipated as a result of the withdrawals of the combat troops who were needed for the invasion of Russia, the match which set off the Balkan powderkeg. The Germans, however, had already made up their minds how to answer individual unrest or local rebellion. Field Marshal von Weichs, who has since disaccepted our invitation to this Balkan reunion, had already given the cue. In April, 1941, von Weichs had issued an order to kill 100 civilians in retaliation for the death of each German soldier and had published posters which proclaimed that it had been carried out. List was not afflicted by originality. He was not too proud to recognize and adopt a good idea when he saw one.

The insurrection in Yugoslavia took shape during July and August, 1941 - by the end of which time, as can be seen from Cartillieri's accurate and detailed account, the Germans had already shot approximately 1,000 Jews and "Communists" in reprisal. List has reiterated that he was home on leave during part of this time. But before he left, he had already received numerous reports of the execution of severe reprisal measures by his troops. Just two days before he left Athens, the death of the German General Lontschar was reported to XII Army headquarters by the Commanding General in Serbia who had ordered 52 "Communists and Jews" to be killed in retaliation. Although List conferred with General Bader just one day after that massacre took place, he now cannot remember having discussed it. The event was evidently considered too trifling to be worth mentioning. List's memory faded out again when he was asked whether at a conference with General Stahl the shooting of captured prisoners by Stahl's Division the day before was on the agenda.

List's troops were overaged, poorly trained and inadequately equipped to do battle with the partisan units which were everywhere harrassing under-manned German garrisons and outposts. He repeatedly asked for reinforcements. When they did not come, he tried to make up with terror what he lacked in military efficiency. On the 1st of September he sent his Chief of Staff, General Foertsch, to Serbia with combat directives for his subordinate commanders. Accurately foreshadowing the tenor of things to come, List ordered "few prisoners to be brought in". (Cartillieri report, p. 24).

Three days later, on September 4, 1941, he issued another of the criminal orders with which he is charged here. The troops were instructed to practice the "use of arms without consideration". The author explains that the term "severest measures" meant that the soldiers should "use those weapons they had at their disposal" and that by "reckless use of weapons" he meant "the employment of all those weapons which were available." This is another example of the re-definition technique which have been already analyzed elsewhere.

Apparently, however, List was not satisfied that the language used in this order was clear enough. So he supplemented it by another order the next day, the famous order of 5 September 1941, which, more than perhaps any other single order, List now wishes he had never issued. In that order he announced that attacks on German troops and installations were being carried out by strong, well-armed, well-organized and well-led partisan bands. To counterattack their power List demanded "ruthless and immediate measures against the insurgents, against their accomplices and against their families." (Hangings, burning down of villages involved, seizure of more hostages, deportation of relatives, etc. into concentration camps)."

The explanations which he gave on the witness stand for the publication of this contribution to German culture are somewhat muddled and self-contradictory, but they have one characteristic in common: they

are all uniformly unbelievable. Once he admitted that he knew the order was violative of international law. Later he changed his mind and took the position that the order could be justified on the ground of military necessity. This, of course, is inconsistent with his assertion that he never would have issued such an order if it had not been for the very heavy pressure which was being put on him by the OKW.

Another thing that List has never explained is why this order was never rescinded. He knew that his headquarters had placed more than an academic interpretation upon it. It is evident from the reports which he received that excessively severe reprisal executions were taking place even before the much-blamed Keitel directive saw the light of day.

On July 25, 1941, a 16-year-old girl was arrested in Belgrade for throwing a bottle of gasoline at a German vehicle. A hundred Jews were shot to death in reprisal four days later. On August 15, 1941, an Armed Forces Commander Southeast report stated that in retaliation for an attack upon a German police car, the town of Skela was burned down and "two Communists" hanged. On 2 September 1941, twenty "Communists" were shot in retaliation for the three German soldiers killed in an attack on a mine at Rtanj, Serbia, and the following day, 3 September, 50 Serbs were shot in reprisal for the soldiers of the 724th Guard Regiment shot by "Communists". A few days later, on 9 September, 50 more so-called "Communists" were shot in reprisal for the death of a single German soldier.

During the month of September 1941, the growth of the insurrection had become so alarming that it received the personal attention of Hitler and of the OKW. To solve the problem List proposed the sending of one of his corps commanders, General Boehme, to Serbia as Plenipotentiary Commanding General with full power and authority over all German military units, as well as civilian offices stationed there.

Hitler agreed and sent an order directly to List charging him with

the task of quelling the insurgent movement in the Southeast. Hitler did not give specific directions, but merely counseled in general terms the "application of the most severe means". On the same day, 16 September 1941, Keitel issued his basic directive, the much-discussed Prosecution Exhibit 53, which described the revolts in the occupied areas as part of a movement centrally directed from Moscow and suggested that "in general" 50 to 100 Communists should be killed in retaliation for every German soldier who lost his life.

As we have already seen, the notion of reprisal ratios reaching as high as 50:1 was nothing new in List's area of command. His troops had been carrying out such measures for over two months prior to the time the Keitel directive was written.

List had no duty to pass on to his subordinates such a general recommendation unless he wanted to. In view of the immense discretion with which he had been invested by Hitler himself he could have simply filed away this "directive" and kept it in the oblivion it deserved without subjecting himself to criticism from anyone. Nevertheless, he chose to pass this flexible "50 to 100" to 1 proposal of Keitel's on to his subordinates without any qualifications or comments of his own. He could only have expected his subordinates to interpret this act as an expression of approval of the suggestions contained in the Keitel directive and as a command by List that the proposed figures be applied at once.

List now says that he disapproved of Keitel's order "for purely humane reasons". The difficulty is that Field Marshal List's humanity is almost six years too late in finding expression. He told his operations officer, Kuebler, to express his protests to the OKW. Kuebler is dead so there is only List's unilateral version of this private conversation. Nor is there any note or record that Kuebler ever passed on such a protest.

List followed the same procedure when he received the OKW's next

brain-child on 28 September suggesting that military commanders keep at their disposal a number of hostages of different political persuasions - nationalist democrats and communists - so that the executions could be more selective. This directive List also passed on to the units under his command.

Meanwhile General Boehme had taken over his new post as Plenipotentiary Commanding General in Serbia. On 4 October List decided to unburden himself of his own thoughts on the subject of reprisal measures. This took the form of an order directed to Boehme in which he directed that all men in the insurgent areas, whether they had taken part in combat or not, were to be seized as hostages in the event of the appearance of bandits or of attacks against the Wehrmacht. Most severe measures of punishment "without further investigation" were prescribed for localities in which or near which such occurrence happened, and particularly against the male population of such villages.

In weighing the credibility of List's protestations here, the Tribunal might put itself in the position of one of his subordinates in the month of October 1941. Such a man would have had received three orders signed by List since the beginning of September which directed that ruthless measures be taken against the civilian population in the event of attacks or sabotage by the partisans. These had been followed by the Keitel 50 to 100 to 1 directive which had been passed on with no limitations whatever by List, and by the OKW order of 28 September. Then on 4 October List issued the pronouncement which has just been described.

What was one of his subordinates to conclude from all this? Is it likely that he was under the impression that List had moral reservations concerning the justice or humanity of executing hostages? We have seen a rather large assortment of German generals in this courtroom and we have heard them say some fairly incredible things but none of them has claimed that it was necessary for him to be psychic in order to interpret the orders of a Field Marshal.

General Boehme seems to have been temperamentally qualified for his job. On 10 October he issued an order changing the elastic "50 to 100 to 1" Keitel ratio to the flat and arbitrary quota of 100 hostages for each German soldier or Volksdeutsche killed and 50 for each one wounded. List was informed of this improved version of the Keitel directive, but again those humane instincts that he had described here fail somehow to make themselves heard. He never uttered a murmur of disapproval of Boehme's action.

Early in October the incident at Grabovac occurred. The partisans had forced certain farmers there to cut down ten telegraph poles. One of the farmers was released after an interrogation by the police. List opinioned to Boehme that the farmer should not have been turned loose and asked what reprisal measures had been taken against the inhabitants of the village for the damage to the telegraph poles. The response came in two installments, the first of which reported that Boehme had ordered every fifth house in the village to be burned down. This was supplemented later by the information that the whole village had been burned and that 73 inhabitants had been shot. List now says that Boehme was harsher than he intended. We submit that Boehme's only fault was that he was literal-minded. In any case, List did not communicate his misgivings about the correctness of the measure to anyone at the time.

Three more of Boehme's actions are worthy of mention. On 2 October, twenty-one members of a German signal regiment were attacked and killed by a detachment of partisans. Two days later, on 4 October, General Boehme ordered that 2100 Serbs be shot. List now says that the communications between Athens and Belgrade were constantly being interrupted and that he did not hear of Boehme's order until after it had already been executed. He was certainly informed about the attack on the German unit and of the number of German losses.

Boehme had already given sufficient proof of the stuff of which not only his dreams but his actions were made to put any sane man

on notice that after an incident of this kind steps should be taken to find out what Boehme intended to do next, especially in view of the orders to Boehme which List had previously issued or passed on. There was ample time for List to make such an investigation. The report shows that the executions did not begin until 9 October and that only 449 people had been shot by the 11th. List had more than a week to inform himself of this impending slaughter and to stop it. He made no effort to do so and he now puts forth the feeble excuse that he did not hear about the order before 8 October and at that time he went to Crete on an inspection tour and did not get back until October 11th. Who could possibly be convinced by such fanciful make-believe.

Boehme carried out two massacres during October 1941. He ordered 2200 Serbs to be executed in reprisal for German losses totalling ten dead and twenty-four wounded near Topola and 2300 more to be shot at Kragujevac for German losses totalling nine dead and twenty-six wounded suffered at Gr. Milanovac. The first incident occurred on the 10th and the second on the 20th. List says that he was sick in the hospital at the time these took place. What we have already said about the holiday-sick leave argument in general is sufficient answer to this. Further, Boehme was List's personal representative in Serbia. He received his directives only from, and was answerable only to List. Not a single one of these butcheries would have been ordered by him if List had expressed his disapproval. On the other hand, there is not a single one of these measures which is not fully authorized and justified by the series of orders which Boehme had received from List. Whether List was physically present in a hospital in Athens, or in his headquarters office, or in the mountains of the moon is completely irrelevant. He put the bomb in the mail box before he left.

The same can be said of the manner in which he seeks to avoid guilt for the two mass executions in Greece on 17 October 1941. In the course of these glorious martial enterprises the entire population of two villages, Ano and Kato Kerzilion, was shot. The martyrdom of these people may not have been well publicized as that of the inhabitants of Lidice. When the Germans had finished, they had done just as thorough a job in Greece as they had done in Czechoslovakia. Again List is bold enough to assert that he was in the hospital when all of that happened.

The Prosecution has charged these defendants with having employed the Army to carry out the anti-semitic ideals of the Third Reich. Like a Brahmin among untouchables, List denied that anything of this sort was done by the troops under his command. Nevertheless, the entire Jewish population of Belgrade was incarcerated in a concentration camp in the summer and fall of 1941. Nor was it accidental that so many Jews were exterminated in the reprisal measures of July to October. For example, all of the victims of the carnage ordered by Boehme on 4 October were Jews. List's capacity for contributing to the richness and depth of the German language by giving ordinary words definitions that are almost startling in their novelty has already been pointed out. The documents repeatedly mention the concentration camps at Sabac, Zasaviza and Semlin. List met this by another performance of semantic alchemy; after the word "concentration camp" had bubbled and glowed in his alembic and crucibles, it came out marvelously refined and transmuted to mean "collecting camp".

The connection between List and the Rosenberg detachments may tend to be forgotten, overshadowed as it is by the other enormities which we have mentioned. The object of these units was to comb Europe for rare books and art treasures besides Jewish and Masonic literature and to haul the former back to Germany and burn the latter before it could "contaminate" further. List's indignation at being associated with this dacoital organization, like his disapproval of the policy of executing hostages, came

a little late. There is in evidence an order of the XII Army dated on 19 April 1941 announcing that a Rosenberg unit had permission to operate in the area. Four days later Rosenberg informed the Nazi Enoch Arden, Martin Bormann, that Field Marshal List had made it possible for his units to be employed in close liaison with the SD at Salonika, one of the largest Jewish centers in Greece. In May, 1941 the commandant of rear army area #560 ordered his subordinate headquarters to cooperate with and support the Rosenberg units in the execution of their tasks. Their tasks were set forth without apparent shame. In October, List's Chief of Staff, the defendant Foertsch, issued an order assigning a Rosenberg detachment to General Felmy for ration, quarters and discipline. It seems a little superfluous even to suggest that the Rosenberg detachments worked hand in glove with the Army because it is obvious that they could not have gone into occupied territory without the Army's permission in the first place. But these examples merely show the extent to which these three specific defendants -- List, Foertsch and Felmy -- were involved in this robbery. Their denials of any such connection are simply one more indication of the weight which should be attached to their testimony.

Finally, List is charged with having carried out the Commissar Order. He was Commander in Chief of Army Group A in Russia from 7 July to 10 September 1942, and he now says that he never even heard of the order, much less of its execution during that time. The improbability of this is shown very clearly by the testimony of General von Leyser who was only a divisional commander in Russia at that time. When he was asked whether he knew about it, his response was, "Yes, this Commissar Order was generally known and everyone was talking about it." If everyone was talking about it and if corps commanders were discussing it at meetings of their subordinates, it seems unlikely that an army group commander, who was also the fifth ranking Field Marshal in the entire German Army, could have been successful in isolating himself from

reality to the extent that List claims for himself. What makes it even more unlikely is that we have introduced in evidence here three examples of reports made by units subordinated to List at that time in which the execution of commissars is described. These denials and confessions of ignorance on List's part are so transparent that it is embarrassing to repeat them.

The details as to the exact time when Field Marshal List ceased to be held responsible by OKW for events within this area of command are a little blurred. During rebuttal we introduced an order signed by List on 30 October 1941, a time when he was supposedly too infirm to know, or to be able to rectify if he cared, about excesses within the army. List's annoyance at the resurrection of a decree which he had long believed would never be discovered was matched only by the vociferousness of his counsel's objections to its admissibility. List was embarrassed not only because of the reflections cast upon his credibility but also because the basis of his very own theory of military immunity, in addition to his claim of physical and mental incapacity, was brought under serious fire.

List set the tone for the German occupation of Greece and Serbia. He put in motion the machinery that murdered thousands of innocent people. There was no one except Hitler who could alter his course and Hitler did not attempt to interfere. List was given a free hand. He used it to wield the Knout (German: Knute) and the bludgeon, to give the signal to the handman and the firing squad. He is the very source and fountain-head of the misery to which these unfortunate people were subjugated during the German soldiery in the Balkans.

By 30 October 1941, however, General Walter Kuntze was already in Athens. On his way there from Berlin he had stopped in Belgrade for a conference with General Boehme whose blood-letting activities were beginning to reach their peak. Kuntze does not recall whether he and Boehme mentioned the three mass executions involving over 6,000 people

which had taken place in a three-week period just prior to their meeting. Even though there were doubtless more important items on the agenda, one would have thought that this matter would have been warranted at least a casual reference.

A word about Kuntze's relation to List. Kuntze was sent to Greece as Deputy Armed Forces Commander Southeast and Deputy Chief of Staff of the 12th Army. He arrived in Athens on October 26 and assumed command the following day. List remained physically in Greece until 6 December 1941 and retained his title as Armed Forces Commander Southeast and Commander-in-Chief of 12 Army until August 1942.

To what extent List was consulted by Kuntze during the time that elapsed before List returned to Germany we do not know. It seems inconceivable that Kuntze should not have consulted with his predecessor at least for the purpose of informing himself as to what policies had been followed up till then and particularly since he didn't anticipate remaining long. At any rate, Kuntze does not attempt to lay the responsibility for events which happened during his period on this. And after List left Greece, it is clear that Kuntze though acting as his deputy had every right and power which his predecessor had ever possessed.

Kuntze admits that he was briefed in detail by Foertsch his Chief of Staff, when he arrived in Athens but his recollection of what took place in this meeting is as sketchy as his memory of the subjects discussed between him and Boehme a day or so earlier. He recalls that Foertsch told him about the revolt in Serbia but he does not think he was given any information about the reprisal measures which were taken by the Germans in order to suppress them.

If you believe this testimony, Kuntze had no knowledge of the Keitel directive of 16 September until some time in December.

Meanwhile the blood-bath was being continued by the worthy Boehme with undiluted energy. As soon as List passed off the stage and Kuntze

stepped into his shoes, then he, of course, became Boehme's chief and responsible for Boehme's action to the same extent as List had been. The citation of just a few of the orders issued by Boehme between the time Kuntze took over and the time Boehme left Serbia on December 6 will suffice to indicate the nature and extent of the kind of activity which Kuntze condoned:

October 30: 800 hostages are to be shot for the murder of eight German prisoners.

October 31: 200 hostages are to be shot in retaliation for the attack on a railway train in which one German soldier was killed and two wounded.

November 19: 250 hostages reported shot in reprisal for losses of the 3rd Battalion of the 697th Inf. Regt.

November 20: 385 hostages are to be shot in retaliation for losses by the same unit.

November 29: 100 hostages are to be shot in retaliation for the death of Corporal Bernhard Schmidt.

Boehme of course followed the highest ratio mentioned in the Keitel directive: 100:1 in the case of German deaths and 50:1 in the case of German wounded. Kuntze says that this ratio was repugnant to him and he points with pride, as evidence of his own humane attitude, to the fact that Boehme's successor, General Bader, reduced the quotas to a mere 50:1 and 25:1. Kuntze claims, but without offering any documentary confirmation, that this innovation was brought about as a result of his intercession, itself a denial of the independence of the subordinate field commanders that has been vaunted so much throughout this case.

It is difficult to say that the behavior of the German troops after Kuntze's arrival was worse than it had been before because of the inherent difficulty of applying a qualitative measure to brutality. Let us say then that some new practices, intended to make the German reprisal machinery run more efficiently, began to be accepted as part of the normal order of things. Captured partisans were shot on principle. This applied

to the wounded as well. It is hard to tell what Kuntze's defense is to the proof which we have brought of these practices. He seems to say that no apology need be made for shooting captured partisans because their activities were unlawful in the first place, although he does think it regrettable that the wounded were also slaughtered. On the other hand, he said that some of the reports show that the captured partisans were standrechtlich erschossen which he contended meant "shot after a summary court martial", that is, after a full legal hearing. The expression "shot after interrogation" used so often in the reports, was just another way of saying the very same thing, Kuntze blandly remarked. If any ambiguity remained on the meaning of this term in actual practice, it was removed by the testimony of Dr. Lattmann, an army judge at OKH headquarters, who said that the phrase conveyed the meaning that no legal proceedings whatever were taken prior to the shooting. Kuntze permitted the basic reprisal orders of List and Boehme to remain outstanding and acted upon though he was constantly informed of the terrible harvest being reaped in Serbia as a result of them. But Kuntze's actions were not only negative in nature. He, too, made certain positive contribution to the German campaign of senseless butchery.

In his order of 6 February 1942 he announced:

"The treatment of prisoners in the course of operations requires application of a more severe criterion. Prisoners taken in combat can not be innocent. People who loiter in the combat terrain and are not in their residence, will be mostly considered as having participated in combat and consequently must accordingly be shot to death. The mild conception of the troops is to be combatted most rigorously in view of the same conception during the past summer and the ensuing consequences!"

On 19 March 1942 he issued an even more brutal order which, to insure wide circulation, he distributed in 100 copies. Kuntze urged the end of indulgence in "false sentimentality", stating that it was preferable that 50 "suspects" be liquidated than that one German soldier lose his life. Other provisions instructed that partisans and civilians be used to clear up mines, and that villages in the neighborhood of which partisan attacks or sabotage actions took place be destroyed, and the inhabitants sent to concentration camps. Finally, he directed that if it were not practicable to apprehend those who participated in the revolt, reprisal measures of a general nature be taken -

"For instance, the shooting to death of all male inhabitants from the nearest villages according to a definite ratio. (For instance, one German dead - 100 Serbs, one German wounded - 50 Serbs)."

So much for Kuntze's initiative in Serbia. The reports leave no doubt that Kuntze's effort of 19 March was not just baying to the moon.

The picture in Greece was only slightly less gory than that in Serbia. In Kuntze's report of 3 June 1942, it was stated that 50 hostages had been shot to death in Crete in retaliation for sabotage and attacks on the airport at Iraklion. On 10 June a report, signed by Foertsch, said that hostages had been shot in Athens in retaliation for attacks on armored cars and that a number of hostages had been shot in Crete as a reprisal measure for the murder of officials appointed by the German authorities.

To unravel Kuntze's incomprehensible explanations for this sanguine record is a task which we willingly hand over to his defense counsel. It seems to be a mixture of lack of knowledge, military necessity, superior orders, plus an argument that more of the reprisal victims were captured partisans rather than innocent civilians. All poured together in no particular proportions nor in any special sequence. He says in one breath

that he was forced to do various things because of the heavy pressure which was put on him by the OKW, and in the next that he deserves credit for having circumvented and modified the orders of the OKW.

In the latter connection he said that in order to deceive the OKW, many partisans were reported to be "temporarily arrested". Kuntze says that the High Command assumed that these people were to be shot, whereas in fact they were not. As at least four documents introduced here show that persons in the temporary arrested categories were shot in large numbers, we are inclined to doubt that there was any such deception.

Kuntze also denies that that the Army had anything to do with the Jewish extermination program or with the institution of concentration camps. As time and again in his reports we find references to the number of Jews in concentration camps mentioned alongside the figures showing the number of hostages and reprisal prisoners being held, Kuntze's memory appears to be wholly unreliable.

So far as the Commissar Order is concerned, we have introduced a report made by the Field Gendarmerie Squad attached to the 61st Infantry Division which was subordinate to Kuntze's 42nd corps in Russia. This report enumerates the execution of 18 commissars and politruks over a two-day period alone. The rest of the report is riddled with references to the shootings of additional commissars and politruks. Kuntze, of course, says that his commanding general had instructed him, in spite of the Commissar order, to treat captured commissars as prisoners of war, and that he in turn instructed his subordinate units to the same effect. The reliability of the report as opposed to Kuntze's credibility is the issue before the court on this point.

If the guilt of these men is to be measured by mere statistics, it is true beyond question that Kuntze has the blood of more innocent people on his hands than any defendant in the dock.

FOERTSCH AND GETTNER

We turn now to the defendants Foertsch and Geitner. It is natural to consider them together because within their respective commands they

occupied identical positions. Both were Chiefs of Staff and both attempt to base their defense mainly upon the nature of the powers, duties and responsibilities which were the concomitants and appurtenances of the position of chief of staff. Of all the defendants in the dock these two men stayed longest in the Southeast. The three men who held the position of Commanding General of the 12th Army were List, Kuntze and Lochr. The 12th Army was succeeded by Army Group E and Army Group F commanded by von Weichs. Foertsch was Chief of Staff to all four of these men, which is to say that he occupied the position of Chief of Staff to the highest authority in Greece and Yugoslavia from the beginning of the German occupation until March 1944. It was through him that continuity in the policies of the German Army in the Balkans was preserved.

Geitner occupied the corresponding position on the staff of the German Commanding General in Serbia and later the Military Commander Southeast. He went to Serbia in July of 1942 as Bader's Chief of Staff and continued to serve under Bader's successor, General Felber, until October 1944.

We have already given a few examples of the crimes which were committed in Serbia and Greece during the reigns of List and Kuntze. It is our position that the blame for these murders ought not to rest altogether on them but should certainly be shared by their Chief of Staff. By asking the court to give Foertsch part of the credit for these occurrences, we do not feel that we are causing List and Kuntze any real deprivation. There is enough crime to go around.

Further, it would be unfair not to give Foertsch, the tactical and political high priest of the Southeast Command, some of the credit. We have mentioned the various orders which List and Kuntze either wrote or passed on to their subordinates. Foertsch had a hand in almost every one. He actually forwarded the Keitel order of 28 September 1941, which

decreed that persons from all walks of the population be arrested as hostages and shot in the event of hostile actions against the occupation power. He passed on the OKW order of 7 February 1942 which demanded that fewer partisans be taken prisoner and that brutal police measures be used to break the backbone of the insurgent movement. He advised Kuntze to issue the order of 19 March which has already been mentioned -- the one which stated that it was preferable for 50 "suspects" to be liquidated than for one German soldier to be killed, -- and after he had prepared the draft which Kuntze signed, it was Foertsch who passed the order on.

But his activities continued, of course, long after List and Kuntze had departed. It is unnecessary to recapitulate the text of the infamous Commando Order of 18 October 1942. Foertsch passed this on to the subordinate units and ten days later drafted and initialed a supplement to it which General Loehr then signed. When Foertsch originally described this supplement on the witness stand, he said that it in effect countermanded the Commando Order. At that time the document itself was not in evidence. Then a photostatic copy of the supplement was shown to him on cross-examination. He then said that the supplement had no reference to the Commando Order whatever but only applied to the partisans, despite the fact that it sets out in black and white that the method of warfare employed by British and American commandos is unlawful and that those who engage in it are not to be regarded as members of an armed power. No paraphrase could do justice to the vicious language which Foertsch employed. Nor could anything we say about the credibility of his testimony be as damning as a comparison between the actual contents of this order and the explanations which its author gave of it on the witness stand.

Foertsch contends that the Commando Order was never even intended to be carried out in the Southeast and that he went out of his way to advise the commanders of subordinate units to treat captured commandos

as prisoners of war. This is contradicted by the documents introduced during the cross-examination of the defense affiants Colonel von Harling and General Winter, both of whom personally participated in the turning over to the SD of at least three different groups of commandos. Winter, Foertsch's successor as Chief of Staff of Army Group E and later Army Group F, testified that he and Foertsch discussed the question of the treatment of commandos captured during a raid on the Greek island of Alinnia. On 27 April 1944, scarcely a month after Foertsch's physical departure from Army Group F, the Commander-in-Chief Southeast ordered Army Group E to retain the English radio operator Carpenter and the Greek sailor Lisgaris, captured on the island of Alinnia, for interrogation purposes. The remaining prisoners captured in that particular commando raid were ordered turned over to the SD for interrogation and then final "special treatment", the latter a term whose meaning von Harling's testimony saved from ambiguity. There can be little doubt that the Winter-Foertsch conversation referred to this very group of commandos. These men, and the many other commandos captured in the Southeast, would never have been murdered if the Commando Order together with its vicious supplement had not been passed on down the line by Foertsch.

So far we have only mentioned acts which were committed by Foertsch in conjunction with his commanding officers, but there is a multitude of iniquities for which he is solely responsible. When General Lontschar was killed in Serbia, Foertsch noted in his own handwriting on the margin of the report, "What counter-measures? Why no hostages in Waljewo?" The burning of Skola and the hanging of fifty inhabitants because they had not warned the Germans ahead of time that a vehicle would be attacked there. This was done by Foertsch's specific order which he gave over the telephone to Colonel von Gravenhorst. The war diary kept at Felber's headquarters contains an entry on 26 November

1942 that the Army chief of staff had requested by telephone that all mayors who remained passive were to be shot to death. The report which Foertsch made on 15 December of the same year is still another example of his handiwork. In it he concluded that civilians should be used for the patrolling of railroad tracks and that in case of damage by sabotage the persons assigned to the patrolling measures should be called to account and, if necessary, shot. The report also advises the use of the population "extensively and ruthlessly for the construction of fortifications."

What has been said already about the connection of List and Kuntze with the liquidation of Jews, concentration camps, and the activities of the Rosenberg units applies even more strongly to Foertsch. It is conceivable perhaps that List or Kuntze were not aware in detail of all the happenings within their area of command. But for a Chief of Staff to plead lack of knowledge is tantamount to an argument by him that he deliberately neglected his duty. It was his business to know the intelligence officers and operations officers who were his immediate subordinates. If Foertsch had been inefficient or ignorant, he would not have remained as Chief of Staff from 1941 until 1944 and have been successively promoted from Colonel to Major General.

It is most significant that Foertsch never once criticized Boehme or Bader to his commanders-in-chief and that he never recommended that any disciplinary measures be taken against Stahl or Buebler or any of the other divisional commanders whose troops had engaged in these murderous orgies. Indeed, it would have been completely incomprehensible for him to have criticized them for having allowed or ordered their troops to do what Foertsch had unceasingly counseled and recommended.

Before we discuss the defenses which Foertsch attempts to use, let us first look at the evidence against Geitner, his counterpart in Serbia. We have already described the bestialities committed by the German troops in Serbia under General Bader. They were continued after

his replacement by Felber. Geitner was Chief of Staff to both. The evidence shows that during this entire period, hostages were being killed regularly in numbers based on the standard ratio of 50-to-1 and sometimes 100-to-1. At the same time, villages were being burned, captured partisans shot, partisan suspects thrown into concentration camps and the relatives of partisans given the third degree. The documents show that Geitner interested himself in the management of the Semlin concentration camp, that he requested an increase in the deportation of Serbs to Germany, and was present at conferences on the so-called Croatian labor recruitment program.

The carnage that went on under the aegis of Bader and Geitner is almost indescribable. The orders which they issued excel in brutality even the directives of the OKW. They ordered, for example, that the established reprisal quotas for dead and wounded should be extended to missing German soldiers. Later, the ratios were also applied to Serbian civil servants, although since a Serbian life was less valuable than a German life, the ratios were naturally smaller; only ten hostages were to be executed for each Serb killed and five for each wounded.

Generally, the philosophy behind hostage executions was that if the actual perpetrator of a hostile act were not apprehended, other people would be punished in his stead. Geitner and Bader, however, passed beyond this. For example, on 4 December 1942, two officers were fired upon and wounded by a 20-year-old woman who later shot herself. In spite of the fact that the assailant was known, the division to which the two officers belonged obtained authority to execute 50 hostages in reprisal. When one of the officers later died, they obtained permission to shoot an additional 25 hostages.

The ferocity and obvious senselessness of such measures, from a deterrent standpoint, can only lead one to believe that so far as Geitner and his commander were concerned, the main object of these killings was simply to thin out the Serbian population upon any or no pretext. Geitner himself in an unguarded moment on the witness stand admitted that the main purpose of these executions was vengeance and the extermination of the Serbs.

It goes without saying that Geitner's initials appear on almost all of the orders and reports concerning the carrying out of reprisal measures. One order dated 5 January, 1943, directs that 35 hostages be shot in retaliation for the killing of two village elders and a Serbian border official and for the wounding of a civil servant. Geitner's name is signed to this document. A week later Geitner initialed another order approving the execution of ten hostages for the murder of a Serbian mayor. The citation of further examples could go on almost indefinitely.

Geitner could not even remember the Commando Order but he was absolutely positive that no commandos were ever executed in the Southeast. This must have been an accidental lapse of memory because the proof shows that on 22 May 1944, five British soldiers captured in the course of a commando operation on the Adriatic island of Oljet were turned over by the Army to the SD in Belgrade. The documents which we introduced as Exhibits 651 and 652 make it quite clear that these men could only have been handed over to the SD on orders of Geitner or Felber.

So much for the evidence against these men. We now turn to the defense on which they rely most heavily, the argument that it is legally erroneous to hold a chief of staff criminally liable for acts committed by troops subordinate to the staff. The duties of the chief of staff, they say, are purely ministerial in nature. He is, in fact, nothing more than a combination secretary, proof-reader, office boy and postman for the commanding officer. It is evident as one considers their testimony that any normal 14-year-old boy could have performed this function as well as anyone else, and one wonders at the outset how the German Army could have

been so improvident of its money, manpower, and brains as to waste a person of the rank, experience and intelligence of Foertsch and Geitner on such unimportant assignments. Having established their insignificance and having deprecated their tasks almost to the point of non-existence, they say that it would be a monstrous injustice for them to be allotted any of the blame for the orders which they drafted, for the orders which they signed, for the orders which they read, corrected and initialed, and for the part which they played in seeing to it that those orders were carried out. This necessitates a brief analysis of the powers and duties of a chief of staff in the German Army and his relationship to his commanding officer.

Prior to the Hitlerian era, a chief of staff in the German Army occupied the status of an absolute equal of the troop commander. The most powerful group within the German Army were the members of the General Staff Corps who over a period of years had entrenched themselves as a corps d'elite which had arrogated unto itself powers which were almost unique. The amazing result of such a development was that a chief of staff whether he was attached to a corps, an army or an army group could take exception to anything that the troops commander did, whether it dealt with strategy, tactics, or basic policy; and in case the two could not reach agreement, the chief of staff could take an appeal through a separate channel of command to the Chief of the General Staff of the entire German Army.

This situation continued until 1938 when Hitler, jealous and afraid of this military oligarchy, stripped the General Staff of these extraordinary powers and decreed that the final decision on the issuance of orders in case of a disagreement with his chief would rest with the troop commander.

It is this change in the status of the chief of staff upon which Foertsch and Geitner rely in their effort to exonerate themselves from the charges brought against them here. That the effect of this change was not nearly so radical as these defendants would have us believe is clearly shown by the Rote Esel, or "red donkey", the familiar handbook for General Staff officers which was issued after the change was made. It reads in part:

"At the head of the Staff stands the Chief of the General Staff. He is the first counselor of the Commander-in-chief in all fields. Close relationship and confidence between both are indispensable as an enduring basis for the beneficial labor of the commanding authority.....

"The Commander-in-Chief has to listen to the Chief of the General Staff, if instant issuing of commands is not necessary, before operational and tactical decisions are made. The Chief has the right and the duty of presenting his point of view and making suggestions.....

"The Chief of the General Staff examines all drafts before they are presented to the Commander-in-Chief."

Further, even though the purpose of Hitler's decree was to do away with the command function of the Chief of Staff, even this was not fully achieved, because the handbook went on to say:

"Simultaneous absence of the Commander-in-Chief and the Chief of the General Staff from the command post should be avoided. If the situation demands a quick decision and the Commander-in-Chief is absent and not to be reached at once, the Chief of the General Staff is required to decide and command....

"Except concerning those soldiers senior to him, the Chief of Staff of an Army Group or an Army has the disciplinary powers of punishment of a divisional commander, the Chief of Staff of a Corps, that of a Regimental commander."

It frequently happened during World War II that a German Chief of Staff would issue orders on his own initiative during the absence of his commander. An example of this kind was discussed during the cross-examination of General Dehner whose Chief of Staff had issued a rather basic and general order concerning the combat of partisans while Dehner was on leave.

We have already mentioned that the Chief of Staff was in charge of the administration of intelligence and operations. He received reports from subordinate units; evaluated the enemy position and strength; outlined strategy; suggested, drafted, signed and distributed orders; and forwarded the reports from subordinate units on to higher headquarters. He called conferences of the various commanders; consulted with military, political and diplomatic representatives; and helped to formulate basic policies for the military and civilian administration of the occupied territory. It was a rare commander indeed who was egotistical or reckless enough to make an important decision without first consulting with his Chief of Staff.

The General Staff bible, to which we have already averted, states that a Chief of Staff must feel the pulse beat of his unit at all times and that he be "distinguished by clear creative thinking and logical behavior, determined energy, untiring working power and self-discipline, and physical freshness". These are rather high standards to require of a combination secretary-messenger boy.

We can easily see from Foertsch's own literary production, "The officer of the New Wehrmacht", how likely it was that he restricted his activities to the licking of stamps and the dusting of desk-tops while Chief of Staff to the most powerful men in the Balkans.

In that book Foertsch wrote:

"Soldierly leadership rests on the joy of responsibility. It is one of the finest but also one of the most difficult virtues of a leader. The greatest enemy of true leadership is anonymity. This appears in various forms; at times in the nameless authority of an office, i.e. in bureaucracy; at times in the conscience crawling behind a higher order, law or regulation; at times in the attempt to deny 'responsibility' in the event of failure in a given act."

Since the whole theory of the guiltlessness of the Chief of Staff is based upon a variation of the superior orders plea, the irony in this passage is particularly pointed.

What has already been said should be enough to demonstrate the incongruousness of arguing that because a man was Chief of Staff he ought to be exonerated of all responsibility for the orders which his Commander issued, particularly when he had a hand in their making and at times even issued them above his own signature. Field Marshal Keitel made the same argument before the International Military Tribunal. Keitel was Hitler's Chief of Staff and he testified that as such it was his duty to express his opinions regarding matters upon which Hitler proposed to act. Jodl was Hitler's Ia or operations officer.

Just as the operations officer served as deputy for the Chief of Staff when the latter was away from headquarters, so Jodl acted as Keitel's deputy during his absences. Both men made contentions similar to those being

advanced by Foertsch and Geitner here. Both were convicted and sentenced to be hanged. So far we have not Foertsch and Geitner on their own ground. Actually all this legalistic quotation of the "Rote Esel" is completely wide of the mark under the provisions of the Allied control council Law No. 10 as far as a defendant is a substantial participant in the commission of a crime whether he is -- I shall better start from the beginning: We can meet Foertsch and Geitner on their own ground so to speak in dealing with their arguments. Actually this legalistic -- do you not have the script. It was handed to you or your colleague. I will go slowly. Actually allot this legalistic refinement, all of this quotation of the "Rote Esel" this argument about the meaning of German Internal is wide of the mark: Under the provision of Control Council Law 10 so long as the defendant is a substantial participant in the commission of a crime, whether he is classified as a principal, an accessory or one who took a consenting part or one connected with plans or enterprises involving commission recognized as a criminal. The close connection of Foertsch and Geitner with those crimes is divided. The crimes were carried out by their orders without their commanders being aware of them. This is the ultimate answer.

So far we have just discussed the argument which is common to the defense of both of these defendants, but Geitner evolved a theory which was a refinement on every previous description of the function of a German military staff that we have ever heard. According to him, the staff was divided into two parts, one of which was concerned with tactical matters and the other with purely administrative affairs. He contends that he was only chief of the tactical staff. The tasks of the administrative staff were not described. Even if this dichotomy had in fact existed outside of Geitner's agile mind, it is difficult to see what difference it would make since Loehr's orders of 10 August 1943 explicitly stated that the carrying out of reprisal measures are "not matters of administration but rather measures of combat."

But Geitner attempted to complicate matters even more. He refers in

his testimony to some un-named lieutenant who was a legal expert and who was solely responsible where reprisal measures were concerned. This fictional creature was supposed to be a member of Geitner's staff and subordinate to him, but he kept a private pipeline to Bader and Felber for the transmission of affairs concerning hostage executions and the like. This fairy tale is not mentioned because it requires any refutation but because it would be almost unfair to let Geitner's inventive fertility pass unrecognized. It seems perfectly logical to us that General Bader should have used his Chief of Staff merely to correct his spelling errors and sharpen his pencils while he sought out some lieutenant to act as his adviser and collaborator in carrying out reprisal measures throughout Serbia.

THE PRESIDENT: Does that complete a division?

MR. RAPP: No, your Honor, I have one more page.

THE PRESIDENT: You may complete the page.

MR. RAPP: The measure of responsibility which the German Army considered a chief of staff for the conduction of his troops could not be better illustrated than by a letter sent by the 15th Mountain Corps to the SS Division Prinz Eugen shortly after the Italian capitulation. This letter was later after the decision had been made to shoot officers of Italian units who refused to allow the Germans to disarm them - this letter passed on a comment made by the 2nd Panzer to the following Army effect: Main culprits and accomplices are to be shot to death. Accomplices generally are: all the commander and general staff officers.

Geitner also developed another explanation which ought not to pass unnoticed. When report after report and order after order concerning the Serbian butcheries all bearing Geitner's signature were produced for his comment, he came forth with the bland explanation that they were false. He said that the German officers in Serbia disapproved of the bloodthirsty attitude of the OKW and decided to circumvent its harsh directives by reporting imaginary executions. Aside from pointing out that the Fischer affidavit demonstrates the complete absurdity of this contention; that

Geitner was unable to point to a single specific example of a mock execution in all of the reports shown him; aside from the fact that Geitner's testimony was contradicted by General Felber who, one would think, has every reason for clutching at any straw himself; and that one of the conspirators named by Geitner in this scheme was SS-Obersturmfuehrer Dr. Schaeffer who had borrowed a gas van to exterminate the Jews in Belgrade, we are at a loss to know how to answer this defense.

It is impossible to take up all of Geitner's defenses, but his arithmetical explanation should not pass unmentioned. There is in evidence here an affidavit signed by Geitner's counsel, sworn to before himself, containing long lists of numbers compiled by persons unknown from sources only specified generally. The apparent purpose of the affidavit is to show that the retaliation ratios were 1:6 instead of 50:1. The German losses set out in this tabulation included combat losses of the Germans but not of the partisans. What this is intended to show, aside from the fact that someone had a passion for playing with figures, is more than a little difficult to understand. If the ability to spin gossamer fabrics of fantasy could compensate for a procession of murders that would bring blench to the cheek of a Borgia poisoner, then Geitner would have good reason to be hopeful of his fate. Fortunately, the law sees through all such irrelevant talents.

THE PRESIDENT: We will take our noon recess and reconvene at 1:30.

(A recess was taken until 1330 hours.)

AFTERNOON SESSION

(The Tribunal reconvened at 1330 hours, 3 February 1948.)

THE PRESIDENT: The tribunal is again in session.

MR. FULKERSON: General Lothar Rendulic is several defendants rolled into one. As commander of the 2nd Panzer Army he was the superior of Dehner and von Leyser while they were in the Balkans. But in 1944 he was named Commander-in-Chief of the XX Mountain Army and transferred to Norway. The ruination and misery which he left in his wake in that country's province of Finnmark constitutes a separate chapter in itself. To make for a more orderly presentation, therefore, we discuss first the activities of Leyser and Dehmer, to return later to the subject of their mutual superior.

Croatia was, at least during the period under discussion, divided into three parts or corps areas. In the north was General Dehner's LXIX Reserve Corps; in the center and including most of the coast was the area of the SV Mountain Corps successively commanded by Generals Lueters, von Leyser and Fehn, and in the south was the V SS Corps with which we are only incidental concerned.

General von Leyser was practically suckled on Prussian militarism. His father was a Lieutenant General in the German Army. He was put into a military school himself at the age of ten, eventually became an officer and stayed in the Wehrmacht until it was reduced to 100,000 men in 1920. Then he was transferred to the police, where he languished until 1936 when he was able finally to go back into the German Army. In describing the unrest in Germany before 1933 and the reasons why he joined the Party, he made a statement which was far more significant than he intended when he said:

"I hoped that in a strengthened Germany which the Party had promised I could take up again my old profession as a soldier, as an officer."

In half a sentence, von Leyser summed up one of the strongest appeals which Hitler had to the members of the old officer class and conse-

quently one of the principal reasons for the world catastrophe of 1939-45.

By the time of the outbreak of the war with Russia, he had risen to be a Brigadier General and was the commanding officer of the 269th Infantry Division, which was subordinate to the XXXI Panzer Corps under General Reinhardt. This corps was in the northern sector of the front and in October Leyser's division found itself before the defenses of Leningrad, having swept all the way from the old Russo-German frontier. Leyser was promoted to Major General as a result of this achievement. After participating in the attempted encirclement of Leningrad, his division was pulled out and moved to the Volchow sector on the shores of Lake Ladoga, where it stayed until von Leyser was transferred from it in August 1942.

We now go back to June 1941, just before the outbreak of hostilities with Russia. The court will recall that the "Commissar Order" was issued by the OKW on 6 June -- at least two weeks before Russia was attacked. Von Leyser said that he first heard about it at a conference of the various commanding generals and divisional commanders of the 18th Army, to which his division had been attached before it was transferred to General Reinhardt's corps. He said that although he was not shown the order, he was apprized of its contents and that "we generals objected to this because it was against our own feelings and because we did not think this order could be carried out".

The Commissar Order was discussed a second time at a conference of the divisional commanders of the XXXI Panzer Corps. There, General Reinhardt said that the Panzer troops would advance so fast that there would not be time to sort out the commissars from among the other prisoners and that, therefore, the order would not be carried out, but, rather, every Russian soldier captured would be treated as a prisoner of war and sent back in the customary manner to the rear. Thus,

von Leyser said, the order was not even passed on to his division, much less carried out. He added, however, that even though there was no official circulation of the Commissar Order, it was known everywhere, not only to the Germans, but also to the Russians.

General von Leyser said that the order was not carried out by his division for two reasons. The first was that in view of the speed with which the Panzer troops advanced, it was impracticable for the commissars to be sorted from the other prisoners. It is difficult to see how the separation of the commissars could have taken much time, since they wore a distinctive insignia on their uniforms.

Further, the break-neck race across Russia came to an abrupt halt once the division reached the outskirts of Leningrad in October 1941. Thereafter, its daily advance could be measured almost in meters. Von Leyser himself said, "It was more or less a war of position." It should be remembered that von Leyser remained with the 269th Division for nine months after this "war of position" began. So much for his first reason as to why the Commissar Order was not carried out.

The second reason the order was not executed, he said, was that it was contrary to his own personal feelings. We will go into the question of General von Leyser's personal feelings presently: we believe the evidence shows that it has undergone a radical metamorphosis since 1941.

But it is not necessary to discuss the reasons he gave why the Commissar Order ought not to have been executed. There may have been many such reasons, but the fact remains that on at least three different occasions the order was carried out by his troops. At least, if his troops were not aware that they were carrying out the order, on three different occasions they did exactly what they would have done had they been following it to the letter, and they did not wait long before they began. On 9 July 1941, the Signal Battalion of the division sent the following message to the headquarters of the Reinhardt Corps:

"34 Politruks liquidated."

General von Leyser conceded that a politruk was the designation for a political commissar. On 28 September, the Signal Battalion reported:

"Special occurrences: 1 female commissar shot, 1 woman who was in contact with partisans likewise shot."

On 20 November, the Artillery Regiment reported that:

"2 Russian prisoners of the First Battery were shot upon order of the Battalion Commander. These were 1 commissar and 1 Russian high-ranking officer."

General von Leyser did not recall any of these incidents. He said that he had no recollection that any commissars were ever shot by the troops of the 269th Division. General von Leyser's memory, in common with the memories of the other defendants, has a chronic tendency to fade out completely whenever he is asked an embarrassing question.

We have said that we would go into the question of General von Leyser's personal feelings, since he has made an issue of them in this case. We deal first with his attitude toward the civilian population of the territories occupied by the German troops. There are three separate books of documents submitted on his behalf. More than half of their contents consist of affidavits submitted by his acquaintances and former comrades in arms. Time after time, these affidavits describe how touched von Leyser was by the suffering which war had visited upon the civilian population, and how considerate, forbearing and sympathetic he was toward them. Here are a few samples of these testimonials:

"consider him incapable of committing an act described as a crime according to the laws of humanity or the penal code. This applies to him even more as he has the quality of exceptional sympathy toward a stranger's fate, especially pronounced in his whole family according to my knowledge."

* * * * *

"I could give still more examples which show the disinterested and completely unquestionable behavior of General von Leyser, especially his sympathy toward the inhabitants and prisoners".

* * * * *

again: --

"The pacification which General von Leyser had in mind could not be accomplished completelybecause his great and generally recognized kindness of heart interfered."

* * * * *

It is difficult to believe that this kind and sensitive being, whose heart was so filled with goodwill toward his fellowman, could have issued and signed the following order on 8 August 1941:

"Hard and ruthless attack by the responsible leaders. Every consideration and mercy is weakness and means danger. Ruthless prevention of every threat by the enemy civilian population.

"Favoring or aiding partisans, stragglers, etc. on the part of the civilian population is to be regarded as guerilla warfare. Suspicious elements are to be turned over to the Einsatzgruppen and detachments of the SD."

We will have occasion to refer as we go on to the various orders which were signed by Leyser or at least passed on by him. The more one sees of the sentiments which Leyser expressed while the war was going on, the more puzzling it becomes to reconcile them with the feelings which he now professes to have. For example, a few months after he issued the order to which we have just adverted, he had occasion to deal with the question of the treatment of prisoners of war.

On 3 November, the following directive was issued from his headquarters:

"Commander-in-Chief of the Army has decided that mines, other than in combat or in case there is danger in detail, are to be detected and cleared only by Russian prisoners in order to spare German blood. This is also valid for German mines."

When he was asked about this order, von Leyser's recollection blacked out again, so we do not have the benefit of his explanation

except that he attempted to minimize the order in importance by saying that at the time it was issued there were no mines in the sector of his division. The section of his cross-examination in which this matter was discussed is a classic of double-talk and evasiveness. Von Leyser followed the battle of attrition concept on the witness stand. In order to get him to admit what time of day it was, it was necessary to specify that he was to answer in terms of mean instead of sidereal time and to furnish him with the latitude and longitude of the Palace of Justice.

Aside from the light which it sheds on General von Leyser's personal feelings", this order that Russian prisoners of war should be used to clear mine fields is interesting in another connection. He says that he did not carry out the Commissar Order because it was contrary to these personal feelings. How could it have jolted his sensibilities less to send untrained Russian prisoners of war out on tasks which were adjudged too dangerous for the German sappers? If he issued the order reluctantly and only because he was afraid not to carry out a directive of the Commander-in-Chief of the Army, how was it that he was not haunted by the same fears so far as the Commissar Order was concerned? Is it likely that he would feel obliged to carry out an order issued by the Commander-in-Chief of the Army and at the same time feel free to disregard a Fuehrerbefehl? We submit that von Leyser did not disregard the Commissar Order, that these executions were reported by his division to the Army for the purpose of showing that the order was being obeyed.

We now turn to von Leyser's activities in Croatia. He arrived there in October 1943 but did not take over the command of the Corps Headquarters formally until the first of November. During this two-week period, he wasted no time. On 20 October he had a conference with three men: Kasche, the German ambassador to Croatia, and two of the Croatian ministers. The subject of this discussion was General von Leyser's authority, and the minutes of the meeting record that at the

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end "General von Leyser demands concise, unilateral, executive authority in case of an increase of tension in the situation which was conferred to him by the ministers." The term "executive authority" is somewhat ambiguous and General von Leyser was asked to give his understanding of what it meant. He said that he would explain it by saying that a man who had it was "Lord over life and death, if I may put it that way"; that it meant a telescoping of all political and military authority and of all governmental functions -- executive,

judicial and legislative -- into one.

Despite this document, von Leyser repeatedly denied that he had any executive authority in Croatia. On cross-examination, however, he admitted that he was the person who was to decide whether "an increase in tension in the situation" existed, which is tantamount to saying that he had this authority when he announced that he had it. The joker which he slipped into this part of the testimony was, however, that he could only exercise this authority in the event that he was not able to get in touch with the Croatian officials. He admitted that this condition was not stated in the documents, but he said that it was "inherent" in them. At any rate we know that von Leyser did exercise executive authority in Croatia for example an instance of its exercise is found in his dismissal of the Gauleiter of Banja Luka.

Leyser lost no time in familiarizing himself with the technique of reprisals. Two days after the corps was formally put under his command one man and four women were arrested and twelve houses were burned down to atone for a railroad dynamiting. The following day an unspecified number of hostages were hanged on the spot where another railroad blasting occurred. Leyser professes not to be able to understand what this second incident was all about. It is contained in a supplement to a daily report of the Railroad Security Service. Both he and General Dehner attempt to disavow all responsibility for hostage executions committed by this organization on the ground that it was not subordinate to them. What we have already said about the weakness of this defense of non-subordination applies with particular emphasis to the Railroad Security Service whose duties were described as the patrolling and guarding of the railway lines -- duties which were performed jointly with the other army troops. It is fantastic to contend that Leyser and Dehner had no control over an army unit operating in their area whose function -- the safe-guarding of lines of communication -- was described by both men as one of their own heaviest responsibilities.

On 5 December, the 114th Division reported that fourteen partisans had been standrechtlich erschossen. The meaning of this phrase has already

been discussed. On 27 January, twenty-two additional hostages were hanged on the site of another railroad blasting. The next day another unit arrested and transferred 32 persons to the SD. On 7 February a Chetnik reconnaissance detachment captured fifteen prisoners and shot all but three. Leyser testified that those Chetnik units had been armed by the Germans and were used as auxiliaries of the German Army. On 5 June it was reported that Croatian combat groups had destroyed a bandit hospital and that 95 wounded and sick had been killed in addition to the partisan combat losses.

These examples from the reports to the XV Corps are sufficient to demonstrate the general trend of events. But it would perhaps give a clearer picture to take a typical operation and trace its origin and development. Leyser's first large-scale undertaking was the "Operation Panther" which he planned soon after he took over his command. In order to prepare his strategy, Leyser had daily tactical conferences with various members of his staff, especially with his intelligence officer who, of course, was continually receiving information from the various divisions on the strength, organization, armament, leadership and location of the partisan groups.

We happen to have one of the divisional intelligence reports for November, 1943 and we also have a compilation or general survey made by the corps intelligence officer on 2 December, so that we are unusually well situated to gauge the information upon which von Leyser based his tactical judgments at that time. We can confine our examination to the "Enemy News Sheet" of 2 December. In it the Corps intelligence officer stated that the partisan units in the area of the XV Mountain Army Corps were made up of the IX Partisan Corps which was subordinate to the Main Staff

Croatia (Tito's staff). The IX Partisan Corps was comprised of three divisions: the 7th (Banija Division), the 8th (Kordun Division), and the 13th Partisan Division. The 7th Partisan Division was made up of four brigades and two mountain detachments. The 8th Partisan Division was composed of three brigades one mountain artillery detachment, and three mountain detachments. The names of the commanders, political commissars and other officers, not only of the divisions but also of the brigades and battalions,

are given. In some instances the prewar professions of these officers is mentioned. This list is so complete that in one case even the name of the battalion veterinarian was included. The number of heavy weapons and the approximate man-power strength of every battalion is set out as well as the approximate locations. The code numbers and locations of the Partisan Army post officers are listed. The insignia of the officers of the 7th Division is described.

In considering this document, one should keep in mind the affidavits submitted on Leyser's behalf which declare in effect that the partisans were merely an unorganized mob of armed hoodlums. "Operation Panther" was classical in its simplicity of concept. The German troops were to enter the regions which the partisan forces occupied. Every chicken, every cow, every horse was to be seized and taken away and every able-bodied man between the ages of 15 and 55 was to be arrested and deported. Leyser sent his proposal to General Rendulic's headquarters on 27 November.

"Corps Headquarters proposes to evacuate the entire able-bodied male population in the area to be mopped up."

This is the part of the text of the proposal which Leyser made three weeks after he had taken over the command of the XV Mountain Army Corps. It is to be noted that the idea originated with him.

Army Headquarters answered by giving its blessing to the project and also by making an improvement on it. Leyser had merely suggested that the male population be evacuated. The Army made this rather ambiguous term more specific. It said that it appeared feasible to ship all these men to Germany for labor. The proposal, as modified by the Army, was sent to the Plenipotentiary General in Zagreb and the XVth Corps was notified that this had been done. Leyser registered no objection to his troops being used for a wholesale shanghaiing expedition.

Leyser self-righteously testified on direct examination that the purpose of the evacuation was to give these able-bodied men an opportunity to serve in the Croatian Army and fight for their fatherland. On cross-examination he was asked why, if that was the object in wanting to evacuate

them, he did not demur when the purpose of the evacuation was changed by the Army to that of kidnapping imprisoned laborers to work for the German Reich. His response was that it was no affair of his where these people were sent, that he was only concerned with the "tactical" aspects of the operation. Leyser's corps was expected to furnish guards for the internment camps where these men were to be kept until they could be shipped to Germany. It is stretching the meaning of the word "tactical" to the breaking point when it is used to include such an activity as this.

In any event, von Leyser's proposal, as revised by the 2nd Panzer Army, was too strong for even the German Plenipotentiary General. He responded that the political repercussions in Croatia which would follow a wholesale shipment of all the able-bodied men in the area von Leyser intended to comb were too risky, and that the corps should evacuate only band suspects and people found wandering around outside of their villages. It was suggested that detachments of the SD could be sent along with each division for screening purposes and it was estimated that some 6,000 persons would be apprehended and deported under this revised scheme.

The operation began. Three German divisions, together with their satellite detachments of SD, were deployed in their respective positions. The great mopping-up operation was under way. The Germans trudged through the mud and snow, scrambled up the hills and penetrated at length into the very heart of the area. With what result? According to their own figures, they killed some 900 partisans and took almost 200 prisoners, as against a total of 70 German dead and 24 missing. These are the figures for combat losses. And what of the evacuation plan? The alarm had been given: The birds had flown. The report ruefully states that only 96 persons were evacuated, but hastens to explain rather lamely that nonetheless the operation was successful because "a rich booty of cattle was brought back" and "the operational intention of the Croatian Main Staff to make an attack reserve out of the 8th Division has been frustrated by the action."

This operation has been singled out for attention because it seems

to be typical of the activities in which Leyser's troops were engaged the whole time he commanded the XV Corps. The code names of these operations follow each other with a bewildering rapidity, but whether they were denominated as "Roesselsprung", "Napfkuchen", "Ristow", "Klettersteig", "Druznica", "Bergwiese", or "Renate", their order was much the same. Villages were burned, livestock was confiscated, Jews were deported, able-bodied men were arrested and hauled off, and the women, children and old people were left to fend for themselves as best they could in the smoking desolation which the Germans left behind. These were the tactical accomplishments of the XV Corps. Even General von Fanniwtz, the commander of the 1st Cossack Division, who should have been fairly insensitive to shock, complained that operations such as "Brandfackel" in which whole areas had to be devastated "on orders" had a tendency to demoralize his troops. Leyser's excuses and explanations for these things are so amazing that they need not be gone into in detail. A fair sample can be found in his comments on the use of all the male inhabitants who were evacuated from the Dalmatian coast as forced laborers to build the German fortifications. Leyser said that these men had nothing to complain about, they were allowed to stay in Croatia. A response such as this may be interesting to a psychiatrist but it needs no comment by any lawyer.

There is scarcely a crime mentioned in the indictment which Leyser's troops did not commit. They shot captured partisans, they hanged hostages, they acted as press gangs for the slave labor program and the puppet Croatian army, they deported Jews, they wrecked hospitals, they burned whole villages in reprisal for the wounding of one German, they hired and armed gangs of Chetniks whose tactics were more bestial than the Germans say the Partisans were. They worked hand-in-glove with the SD on expeditions whose original purpose, as proposed by Leyser, even turned the German Plenipotentiary General pale. For variety of crimes the XV Corps under general von Leyser holds its own with the best the German occupation forces in the Balkans could offer.

General Ernst Dehner was appointed commander of the LXIXth Infantry Reserve Corps in August, 1943, immediately after the staff of the 2nd Panzer Army was transferred to the Balkans. The area of the Corps was the northern third of Croatia and its main function was to protect that section of the vital Vienna-Salonika railroad which passed through the corps area between Zagreb and Belgrade.

The troops which Dehner had at his disposal were for the most part slightly superannuated. They were supplemented, therefore, by the young hot blood of about 25,000 Cossacks who were commanded, on paper at least, by General von Pannwitz. Actually, from the reports concerning this 1st Cossack Division, General von Pannwitz must have led a rather full life during those days. He seems to have spent so much of his time signing death warrants for members of his division who had been court-martialed for lootings, murders, mutilations and rapes that one wonders when he found an opportunity to attend to tactical matters.

Another source of the corps's strength was the 173rd Infantry Division whose commander, General von Bohr, visited here some ten days ago to explain some of the statements in his affidavit which were not entirely clear to us. Finally, there was the 187th Infantry Reserve Division. The other troops attached to the corps, with the exception of the Railway Security Service play only a small part in these events either because they were so small or because they stayed in the area such a short time.

It will be remembered that the Rendulic order prescribing a 50:1 ratio was issued on 15 September 1943. Prior to that time we find no reports of hostage executions in the area of the LXIX Corps, but General Dehner, like General Boehme, was literal minded. Once Rendulic had suggested the desirability of hangings and shootings, Dehner wasted no time. On 20 September, the 187th Reserve Division reported its intention to hang ten hostages and to burn down some villages for an attack on a truck of one of its regiments. The next day it was reported that these people had been hanged. Dehner said that he was on leave at the time this took place and,

in addition, that he never had heard of it because this particular report was not cleared through his corps. In any event, he did not long remain in ignorance of the way the wind was blowing. To go into all of these incidents in detail would take too much time. Even to give the dates and occurrences in tabular form would be monotonous. November 1943 seems to have been an active month. It has the additional advantage in that Dehner admits he was in his corps area during that time. We will, therefore, summarize the executions during this 31-day period.

3 November - three bandits hanged by reconnaissance patrol.

5 November - 100 bandits hanged for attack on the railroad and on a police unit.

6 November - unspecified number of bandits and suspects hanged.

7 November - 19 Communists hanged.

8 November - 21 hostages shot.

12 November - 20 hostages hanged and 20 hostages shot for sabotage of railroad and attack on a patrol.

15 November - 13 hostages hanged for attack on passenger train.

30 November - 15 bandit "suspects" executed after attack on recruit transport.

There appears in the documents a total of at least eighteen such incidents reported by the 173rd and 187th Divisions in Dehner's corps.

The total number of persons murdered in the course of these operations is something over 450 people. Arithmetical exactitude is impossible, because in certain instances the number is not given. But the figure 450 is a safe, round estimate.

To go into Dehner's defenses would be even more tedious than to enumerate the crimes which his troops committed. He exhausted the entire arsenal with the exception of the defense of superior orders. Each document was handed to him. Twenty times he was asked, "Herr General, haben Sie dieses Dokument unterschrieben?" Twenty times he answered "Nein". One had the impression of being in a chamber of echoes.

His Counsel omitted this standard question with respect to the document reporting the hanging of bandits and people suspected of being bandits on 6 November, nor was it asked in connection with the report containing the news that 21 hostages had been shot on 8 November. The reason possibly was that his initials appear on both. Nor was he asked it in connection with another report that four hostages were hanged on 2 December. His signature appears on this one.

The first defense that Dehner makes is that the tactical incident probably never happened. Next, if it did happen, he never heard of it. Besides that, it was probably not carried out by the Army at all but by the Croats, the SS, or the Police. When the document points its finger unerringly at some army unit, then it just happens that this unit had a very special status in his corps area; it was operating independently of his authority and was not subordinate to him in any way.

The importance Dehner attaches to the presence or absence of his initials on a document was alluded to during the earlier discussion of the defenses common to all of the defendants. It will be remembered that by his own admissions Dehner proved that this fact had absolutely no bearing on whether or not he was actually informed of a given document's contents.

More than any of the other defendants here, Dehner has attempted to push off the responsibility for those hostage executions on to his divisional commanders. More than any of these other defendants, he has needed to resort to this tactic. There are not as many avenues to use as an outlet of probative pressure in Dehner's case as there are in the case of many of the other defendants. He has to push the criminal responsibility either sideways on to the police and the Croations or else thrust it down his chain-of-commands to his divisional commanders. For if he tries to heave it up, it will land squarely in the lap of General Rendulic, an awkward result to say the least.

We have already described the absurdity of Dehner's contention that General Rendulic issued a hostage order and then completely relieved his corps commanders from the responsibility for seeing that it was carried out. Dehner would have us believe that he spent half of his time away from headquarters, visiting his various troop units to familiarize himself with the local situation, and that despite the flood of reports which were coming in to him, as the tabulation we have given illustrates, though he never discussed the matter of hostage executions or reprisal measures with any of his divisional commanders. He tries to dissociate himself from this sordid business by saying that he had no judicial authority and that it would have been meddlesome of him, a Lieutenant General, to discuss these affairs with his direct subordinates.

If there is any remaining doubt of Dehner's responsibility for these garrotings and shootings, it should be removed by a consideration of two different remarks which he made in the course of his testimony. He was asked whether in his opinion these reprisal measures were effective; that is, whether they achieved the desired result of establishing peace and quiet. He answered that they did: in fact he previously testified that in his opinion it was impossible to keep order in the Balkans without the use of reprisal measures.

The second remark which is significant as showing who was responsible for carrying out these measures was made in the course of trying to explain away a certain hostage execution. Dehner said that it was probably done by the Croats. He was asked why he thought so. His response was that the incident which provoked it was an attack on a Croatian unit, so that one would normally expect the retaliatory act to have been committed by the Croats.

Using General Dehner's own logic which is based, of course, on his knowledge of local customs in his corps area, we can draw some con-

clusions of our own. One of his most relied-on arguments is that even though a given mass hanging was reported by the 173rd Infantry Division, it is not clear that the officers of that division ordered the hanging or that the troops of that division fashioned the nooses. We do know, however, both from General Dehner's testimony and from General von Behr's testimony, that one of the principal tasks of this division, and for that matter of the 69th Corps itself, was the guarding and protection of the railroads. Von Behr said that when an attack was made on a railroad in his divisional area, he was held primarily accountable for it. Therefore, we may assume that if the occasion of a given hostage execution was railroad sabotage, as most of them were, the retaliatory measures for this would be carried out by the German Division which was primarily charged with protecting the railroad.

A word about the Railroad Security Service. Both Dehner and Leyser now deny that this organization was subordinate to them. They say that it was directly subordinate to the 2nd Panzer Army. This contention is sufficiently far-fetched in Leyser's case, but in Dehner's it is utterly absurd. He said himself that one of his main duties, the whole time he was in charge of the corps, was the securing of the Zagreb-Belgrade railroad. He said that his troops were used to patrol it. Yet, it is now contended that this Railroad Security Service, which did nothing but guard the railroad, was independent. This contention is obviously an afterthought. General Dehner himself in the course of cross-examination made it quite clear who was in charge of these units, when the following colloquy took place:

"Q. Now then, between that time, between the 20 December and the time they came back in the middle of March, you were left with only two divisions in your area?

"A. I had in my Corps area the two reserve divisions, namely the 173rd and 187th, to which reference was made before. I also had the Cossack division and toward the end of 1943, I had the 367th Division to which I also referred on direct examination. Then I had a number of other units, which were attached to the division, such as railway security battalions....."

There is very little else to be said of Dehner. If there had been hostage executions in his area on only a few occasions, it might have been necessary to say more. But during October, November, and December, 1943 -- the period when the Rendulic 50-to-1 order was in force -- reports of these massacres were coming into him almost every day. If these crimes had been committed by one of his divisions, we might be able to accept his explanation that hostage executions were solely the business of the divisional commanders. But each of his subordinate units was as murderous as the next.

His initials and signature on some of these necrologies show that he knew what was happening. When he did not read the reports, his Chief of Staff told him what was in them. He testified that he spent half of his time personally visiting his subordinate units for the purpose of finding out what was going on. He was as close to the men who pulled the triggers and tied the hangman's knots as any defendant here. It was a practical impossibility for one of his divisional commanders to be promoted without his approval. Yet Dehner now wishes us to believe that there was nothing he could do by way of restraint.

Dehner has the dubious distinction of having one of the worst records, and the most unconvincing defenses, which have been offered to this Tribunal.

When the war against Russia began, Rendulic was the Commanding General of the 52nd Infantry Division. He denies, of course, that he ever executed the Commissar Order. His testimony is in flat contradiction to the official record kept by his staff officers. On 6 September

1941, the division reported that two commissars had been seized and shot. On 11 September an order was issued to the component regiments of the division, stating that "former Red Army men in uniform or civilian clothes loafing around, Jews, persons on whom weapons are found, or those who can be pronounced as partisans, are to be shot immediately."

The attitude of Rendulic toward the Jewish question is reflected clearly in this report. Several times it is reported that Jews were used to clean up the streets, evacuated or drafted into the labor service. Along with the two commissars, one Jewish functionary was shot.

In August, 1943, having meanwhile become a four-star General, Rendulic was transferred to Croatia as Commander of the 2nd Panzer Army. He had an overall supervision of the areas occupied by the troops of Dehner's and Leyser's corps. In addition to these, the V SS Corps and the XXI Mountain Corps were also subordinate to the 2nd Panzer Army. Rendulic is, therefore, accountable not only for the crimes which have been enumerated in connection with our discussion of Leyser and Dehner but he also bears the joint responsibility for a number of other outrages committed in those other corps areas, plus a number which took place within the area of the XV Corps before Leyser became its commander. For example, the Prinz Eugen Division hanged twenty partisans for an attempt to blow up railroad tracks while this division was subordinate to Luetters. Other reports made during the period of Luetters' command of the XV Corps show that 19 partisans were shot; that hostages have been arrested and that the slightest resistance was to be broken by ruthless terror; that 27 Chetniks were to be hanged as a reprisal measure; that two villages were burned down and eight men hanged in another operation; and the one village was burned and 100 bandits shot in another. From the V SS Corps it was reported that

24 hostages were shot and one hanged in retaliation for the death of a single German soldier.

In connection with reprisal measures and particularly the execution of hostages carried out in the area of the 2nd Panzer Army, the Rendulic order of 15 September, 1943, plays a very important part.

The explanation for it which Rendulic gave was that he merely was making a current compilation of all previous orders on the subject; summarizing which was made necessary because of numerous supplements to the Keitel directive of two years before. Rendulic even tried to use this order to make himself out to be a humanitarian because it prescribed a ratio of only 50:1, whereas the Keitel directive had allowed for a figure of 100:1.

As in the case of the other defendants, the attempt to exonerate himself by pointing to an OKW order is irreconcilable with what he said in other connections. For instance, he claimed on the witness stand to have disregarded absolutely the Fuehrerbefehl of 25 July, 1943, which provided for the transfer of all captured partisans for work in the mines. He says that since in his judgment the labor shortage was more critical in Croatia than it was in the Reich, he simply kept them in spite of the mandate of his Supreme Commander. We have already pointed out that he says he refused to carry out the Commissar Order. The truth is, the hostage order which Rendulic gave was promulgated and passed down because Rendulic believed that it was the proper way to meet the situation. If he had not thought so, he would have disregarded the Keitel directive with all its supplements just as he disregarded other OKW orders when he disagreed with them.

Leyser and Dehner as well as Rendulic constantly tried to minimize the importance of this 50:1 order by saying that it was rescinded early in December so that it was only in effect some 2 $\frac{1}{2}$ months. That, of course, is no answer. But the significant thing is that during this period most of the hanging and shootings took place. The effect which the issuance of this order had on the troop commanders can be clearly seen from the standing instructions subsequently issued by Fischer and Niedholdt during the month of October. This one order is sufficient in itself to convict a dozen men of murder.

But the long register of crimes ascribable to Rendulic contains an infinite variety. It is not confined simply to the killing of hostages. One spectacular item is the conduct of his troops toward their former Allies directly after the Italian surrender.

Mussolini abdicated on 25 July, 1943. The Germans had been apprehensive that the Italian Army would not much longer continue a struggle for which it had never displayed a sensational enthusiasm and this event confirmed their fears. The OKW began planning what the German troops were to do in the event of an Italian capitulation to the Allies. They knew the location

and strength of all the Italian units and in August a series of directives were sent out from Berlin alerting the commanding generals in the Balkans to the possibility of an Italian surrender so as to allow them to make whatever tactical arrangements were necessary in order to disarm the Italians and to take over the occupation tasks of the Italian troops if that became necessary.

On the night of 8 September, the surrender terms having been signed by the representatives of his government, Marshal Badoglio, the Italian Head of State and Commander-in-Chief of the Italian armed forces, issued an order to all Italian troops in the field, informing them of the terms of the surrender agreement and giving them directions as to what they should do. The gist of these directions was that though they were to take no aggressive action against the Germans, the Italian troops were not to allow themselves to be disarmed. Any such attempt on the part of the Germans was to be interpreted as hostile act which the Italian forces should resist to the fullest extent of their power.

The Italian troops in the Balkans were all part of Army Group East which was composed of two armies, the 9th stationed in Croatia and Albania and the 11th in Greece. The commander of Army Group East was General Rossi.

Rendulic, upon learning of the Italian capitulation, acted promptly.

On 9 September, the operation "Axis" was begun and the German units moved with synchronized swiftness to their pre-arranged positions. On the 10th, the SS Division "Prinz Eugen" reported that its combat teams had "encountered resistance from Italian units" which had refused to capitulate and that dive-bombing attacks by German planes had been employed to induce a more reasonable frame of mind.

Now it was obviously to the best interests of the Germans to persuade the highest Italian commander to order all his troops to give in and be disarmed by the Germans. The commander of the Italian Army Group East, General Rossi, was among those who refused to disobey Badoglio's instruction.

It would not do to have the natural resentment on the part of many of the Italian troops toward being ignominiously disarmed and made prisoners of war by the Germans stiffened by the attitude of the highest Italian commander, so in the very next day, 11 September, a capitulation agreement was signed by the Italian General D'Almazzo, the Commander of the Italian 9th Army.

Meanwhile, the day after the Italian surrender to the Allies, Keitel had issued an order directing what was to be done with Italian soldiers who refused to continue fighting on the German side. After being disarmed, they were to be considered as prisoners of war, the skilled workers among them to be sent to work in the German armament factories, and all the others to be used as slave laborers, on the construction of the so-called East Wall.

On 11 September, the same day that General D'Almazzo signed the capitulation agreement, Rendulic ordered that wherever Italian troops continued to offer resistance they were to be given a short-term ultimatum saying that unless the resistance ceased, the commanders responsible for it would be shot as francs tireurs. The next day he issued another order to General Lucters, providing that in case of destruction of arms, ammunition etc. by the Italians, one officer of the divisional staff and fifty men of the division concerned would be shot to death, in addition to the culprits. The Italian commanders were to remain in charge of their men during the evacuation from the coastal areas to certain surrender points designated by the Germans in the interior of Croatia. Any Italian soldier who arrived at the entraining station without his arms would be shot to death, together with his unit leader, and if any motorized vehicle were destroyed, one officer and ten men would be shot.

Another order the next day provided that if any of the Italian troops refused to do as they were ordered, "severest measures of compulsion, reprisal measures (shootings to death)" were to be applied.

In spite of the order of D'Almazzo, several Italian divisions refused

to surrender to the Germans. One of those was the "Bergamo" Division stationed at Split and another was the Division "Taurinense" in Albania. Various smaller Italian units also refused to lick the German boot.

The SS Division "Prinz Eugen" was dispatched to Split to subdue the "Bergamo Division." Apparently the resistance it encountered was too stiff for the 92nd motorized Regiment was dispatched to help out in quelling the revolt which centered around the Italian General Roncaglio. By 28 September, the XV Mountain Corps to which the "Prinz Eugen" Division was subordinated, was able to report that the majority of the Roncaglio Division had been taken prisoner and that 300 of its captured officers would be executed in accordance with the Keitel order of 15 September. The entry in the war diary of the XV Mountain Corps for 27 September reads: "commanding general has called investigation to ascertain guilty officers." The reference apparently is to Rondulic. The next day the XV Corps again instructed the SS Division "Prinz Eugen" to proceed according to previous orders -- "officers to be shot to death by summary court martial, non-commissioned officers and men to be deported East for compulsory labor employment." Accordingly, the division delivered 9,400 Italian prisoners for transport to work camps in the East.

General Roncaglio was flown to Belgrade at the special request of Rondulic. A number of other Italian officers, including 3 generals, were retained for execution. The precise number of Italian officers who were shot by the Germans cannot be seen from the captured documents, and, of course, Rondulic claims he does not know. On 30 September, however, the 3 generals were killed at Split and on the following day the shooting of "45 additional guilty Italian officers" was reported. On 3 October, an "additional 9 officers of the Bergamo Division" were reported shot, and on 12 October, "4 more officers of the Taurinense were shot as reprisal." We need not attempt to catalogue all of the reported executions. They continued, however, until at least 26 November when reprisal measures were reported to have been carried out against 8 more Italian officers.

The facts summarized here are not in dispute. What are the excuses

and explanations which General Rendulic offers? His defense is best fundamentally upon the capitulation agreement which D'Almazzo signed which, he argues, was a bona fide contract that D'Almazzo was authorized to make so far as he, Rendulic, knew at the time. Of course, in order to sustain this argument, Rendulic had to deny that he knew anything about Badoglio's surrender proclamation of 8 September and he also had to profess his belief in D'Almazzo's authority.

One document which the prosecution introduced in rebuttal blows all of these contentions sky-high. It shows that in actuality Rendulic knew of Badoglio's surrender on the very day it was announced. On that day, 8

September, at 2150 hours, the 2nd Panzer Army informed its three subordinate corps that

"According to the declaration of Marshal Badoglio, the Italians are fighting together with the Allies and refuse any sort of surrender of weapons."

The teletype message went on to say that "according to radio Cairo, Italian troops in the Balkans are subordinate to the American General Wilson." Rendulic, therefore, knew perfectly well that no Italian officer in the Balkans could sign an agreement to surrender to the Germans without directly violating the order of his superior.

But here is the amazing thing which this document discloses: It appears that on 11 September, three days after the Badoglio proclamation, Rendulic personally went to Tirana and Albania by air with a company of German parachutists and arrested General Fossi and his Chief of Staff. This happened at noon. At two o'clock the diary reveals that General D'Almazzo was installed in Fossi's place "and is to receive his instructions concerning concentration and orderly withdrawal of his units from the Commander-in-Chief of the 2nd Panzer Army." The installation apparently took place at General Bader's headquarters in Belgrade. Rendulic had done a good day's work. He had captured and deposed one Italian commander, flown to Belgrade and installed D'Almazzo in his stead and concluded a surrender agreement all on the same day.

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This completely topples the Italian surrender agreement defense behind which Rendulic attempted to hide. It incidentally shows that not an iota of credence can be placed on any of the testimony he made on the witness stand. He knew when he was testifying that this whole story was fiction from start to finish and that this vaunted "agreement" with the Italian Commander-in-Chief was nothing but a sham.

The introduction of this document into evidence eliminates the necessity of a prolonged argument over the law of surrender agreements. It is evident that before an agreement can be binding on anyone, both parties must act in good faith and have authority or at least colorable authority to contract. It would be a simple life indeed if we could merely kidnap everyone who would not accede to our terms and install a ventriloquist's dummy in his stead.

The last action of Rendulic to be noted concerns the devastation of northern Norway. The story here is a simple one. The Finns had gotten their fill of the war and had decided that further resistance against the Russians was stupid. The German troops were given two weeks' notice to evacuate the country. The 20th Mountain Army, under Rendulic, was stationed in northern Finland, primarily to secure the airfields and ports which had served as bases for German air and sea attacks on Allied convoys going to Murmansk and Archangel. Another important task had been the protection of the vital nickel mines at Kolosjoki.

Actually, the Finns did not sign an armistice with Russia until six weeks after they had notified the Germans of their intention, but even this additional time did not enable the latter to retreat in a comfortable and leisurely fashion.

On 4 October, the OKW ordered that Rendulic have his troops in the course of their withdrawal destroy all installations which might be of use to the enemy. This order ended with the instruction that:

"the entire population of Norway capable of bearing arms is to be taken along as far as marches permit and to be turned over to

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"the Reich commissar Norway for compulsory labor employment.

"Finnish hostages are to be taken along as the situation requires."

Rendulic denied that any Finnish hostages had ever been taken. The documents introduced in the course of his cross-examination completely disprove this. Apparently they were seized as so-called security hostages to be shot in case the Finnish troops interfered with the German destruction of bridges and other installations, including the machinery of the nickel mines.

The line of the German march from northern Finland and westward into the Norwegian province of Finnmark. The Russians had closed in during the latter part of September, but advanced rather slowly. It took them almost two weeks to advance the last 100 kilometers before they got to the banks of the Tana River, some 50 miles west of the Norwegian-Finnish border. The German rear guard patrols lost contact with the Russians at that point because the Russians never attempted to penetrate any further into Norway. In other words, the main body of the Russians halted on approximately the 21st of October.

On 28 October the OKW issued a second order to Rendulic. It provided that since the population of northern Norway had displayed an unwillingness to evacuate their homeland, Hitler had agreed to Terboven's suggestion that the evacuation be made compulsory and that all habitable dwellings be burned down or destroyed. The next day Rendulic passed down a similar order, practically incorporating Jodl's language, to his subordinate units. It contains a remark, "Pity for the civilian population is out of place."

Now since Rendulic seeks to justify the issuance of this order on the ground of military necessity, a few points

should be considered. First, at the time it was given, none of his troops had seen a Russian for more than a week. Second, Rendulic knew that the Russians had made no attempt to cross the Tana and that they probably would make none. He knew this for a number of reasons. Also, by following the Germans as far as they did, the Russians had dangerously extended their lines of supply and for them to have made an expedition into Norway would have necessitated the establishment of a major supply base in northern Finland which they had not attempted to do. The number of troops which the Russians had committed in northern Finland was insufficient to carry out an invasion of Norway. Rendulic knew this not only through reports of his spies and agents but also through his aerial reconnaissance. It is true that the weather was not favorable for flying during this period but, General Dahl testified that during part of the day reconnaissance flying was possible and, we know that Rendulic had reconnaissance planes at his disposal. Even if he did not, he had other sources of information about the number and movements of the Russian troops. The area over which the Russians were advancing had been occupied by the Germans for a long time and had only recently been evacuated by them. It is safe to assume that it had been liberally sprinkled with German spies and agents who remained behind for this specific purpose of furnishing intelligence about the Russians. The Germans intercepted Russian radio messages and had also interrogated Russian prisoners of war.

General Ferdinand Jodl who was one of the corps commanders in the 20th Mountain Army at that time testified that the order to evacuate Finnmark and to apply the scorched earth policy to it was so plainly unnecessary

from the point of view of military necessity that if he were given the order to do it again, he would resign his commission before carrying it out.

At any rate, it was carried out with the thoroughness which the German Army has always displayed in such actions. Everything was laid waste -- fishermen's huts, earthen dugouts of the Laplanders, churches, schools, power plants, telephone and telegraph lines, boats and roads. In the darkness and cold of the Arctic winter, tens of thousands were driven from their homes. The able-bodied were marched off and the old, the sick, and the children were transported by ship. "Pity for the population is out of place," Rendulic had said. All this Rendulic seeks to justify on the ground of military necessity. The only reason for this vandalism which could possibly be related to military necessity is the destruction of roads and communications. There was only one highway, however, which ran from north to south. Yet the Germans acting under this specific order of Rendulic not only destroyed every dwelling place, barn and other evidence of civilization in the vicinity of the highway but throughout an area 40 miles on either side of the highway. The destruction began in October, and was continued until the German surrender to the Allies.

In some instances, a general who puts forward a plea of military necessity to charges of wanton devastation makes his accuser appear to be substituting afterthought. It is perhaps rare for a case of devastation to be so completely unjustifiable as this one. Military necessity has been used more than any other excuse to defend the causing of misery to non-combatants. In this instance it obviously had no application. Were we to explore the inner recesses of a mind brutal capable of ordering this senseless waste,

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we would be leaving the realm of law and entering that of psychiatry. It is enough for us to show that the action was futile, vicious and unreasonable.

Part of the clue to this callousness toward his fellow creatures may be found in his political credo. We have refrained from dwelling on the political and ideological tenets of these defendants to any extent. But with Rendulic, to pass over these things is to ignore the very pulse of the machine. For politics, and particularly Nazi politics, have played quite as important a role in his life as has the pursuit of his profession as a soldier.

Rendulic was attracted by Nazi doctrine from the beginning. He joined the Party in 1932 and belonged to it until it was made illegal by the Austrian government. Immediately after the Anschluss, he was re-baptized and soon became one of its outstanding advocates within the ranks of the professional soldiers. He enjoyed Hitler's confidence and friendship to an extent that was almost unique. So securely entrenched did he feel himself to be in the affections of Hitler that he did not hesitate upon occasion to disagree with or even insult one of the other royal favorites. He snarled at Kasche, lectured Terboven, screamed at Koch and berated Eigruber with impunity.

He constantly urged that the troops be saturated with Nazi concepts. On the witness stand he cynically explained that troops who believed in ideology fought better than troops who did not, and that it made no difference to him what ideology was used so long as it had the desired effect. To discuss all the philosophical implications of that remark would require another address the length of this one.

Rendulic was eminently successful in convincing the

Nazi Party leaders of the sincerity of his devotion to their cause. It is probably no accident that he, the most active and articulate Nazi in the dock, also is by far the most decorated defendant. He was even awarded the coveted Golden Party Badge, which was not a military honor at all but merely a recognition of usefulness to the Party.

We are not trying Rendulic for his political affiliations. They are significant here only in that if we seek an explanation for the spoor of blood and ashes which he left behind him, the only possible answer seems to be in the obscene mantlings of the master-philosophers to whose faith he was so active a servant.

LANZ

After General Hubert Lanz refused to carry out a Hitler order to attack when in February 1942 he commanded what amounted to an army in Russia, he was relieved of his command and sent home. Significantly enough, General Lanz, who almost more than any other defendant made superior orders a part of his defense, admitted that other than being relieved of his command nothing disastrous happened to him as a result of his disobedience. He was not discharged from the Army, his pension was not cut off, he was not court martialed nor were any recriminatory measures taken against his family. After resting at home for four or five months, Lanz applied for another assignment and on 26 August 1943, was named Commanding General of the XXII Mountain Corps in Greece. Such was the disastrous result of his defiance of a Fuehrerbefehl.

On the 9th of September 1943, Lanz flew to Joannina and took charge of the XXIInd Mountain Corps with its subordinate 1st Mountain and 104th Light Infantry Divisions. Immediately, Lanz faced the task of disarming the Italian

units within his corps area. General Vecchiarelli, commander of the 11th Italian Army, agreed to the German demands, but the leaders of the Italian garrisons on the islands of Cephalonia and Corfu refused to be bound by his command. Lanz himself flew to Cephalonia on the 12th of September 1943, and talked with Gandin, the Italian commander there, who stated that he could not surrender because his orders were "unclear". Lanz says that he could see no excuse for Gandin's recalcitrance, because since Gandin was subordinate to Vecchiarelli, he was plainly bound by the latter's capitulation agreement.

In order to justify his own attitude, Lanz has to pretend that he had no knowledge of the terms of the Italian-Allied armistice of 8 September, though those terms were announced to the German government by Badoglio himself and were published in all German newspapers on the 12th of September. As we have just seen, Badoglio's proclamation was known to Rendulic and his staff on the same night that it was delivered. Lanz could scarcely have been less informed than another segment of the same Army Group F. Gandin, in stating that his orders were "unclear", could only have meant that he had already received orders from Marshal Badoglio, which contradicted the orders which Gandin had received from Vecchiarelli. Knowing full well that Vecchiarelli had also received orders from Badoglio not to surrender, so that the capitulation agreement was void for lack of authority, Gandin did the only thing possible - he obeyed the orders of his commander-in-chief and the head of his government. Gandin was regarded as pro-German, which indicates that he would have been inclined to surrender, had his sense of duty not overridden his personal predilections.

Lanz maintains that following their talk on the 12th of September 1943, Gandin promised, in return for an "order" from Lanz, to surrender his troops and arms, and that in later refusing to do so he broke his pledge. We have only Lanz's testimony with respect to Gandin's alleged "promise", but what we do know is that Lanz himself on both the 14th and the 17th of September acted in bad faith towards Gandin. On both of those days, Lanz had leaflets dropped to the Italian troops on Cephalonia stating that if they surrendered, the Germans would transport all of them back to their homeland. Such procedure was, of course, entirely out of the question and Lanz knew it. We have already mentioned the Keitel orders of 9 and 15 September which provided for the shipment of Italian soldiers to the East. If there was, therefore, any violation of an agreement on Gandin's part, Lanz is hardly the one to complain.

Fighting broke out between the German and Italian units on Cephalonia and after bringing up reinforcements, the Germans eventually defeated the Italian Detachment.

On 23 September Gandin was captured with all his staff, and on 24 September Lanz's own corps report related that Gandin and his entire staff had been given "special treatment according to the Fuehrer order". Lanz asserts that those Italian officers -- their precise number he cannot of course recall -- were shot only after court martial procedure. His report mentions no such procedure. Further, it is evident from merely a casual inspection of the documents concerning the Italian surrender that a court martial, when it was held, was only a hasty formality with a predetermined result.

The German losses in fighting for Cephalonia were between 80 and 100 soldiers, while the corresponding Italian losses were, according to Lanz's own report, "600 killed or shot." Lanz maintains that the language "killed or shot" is of no particular significance; that all the Italian losses were the result of the combat action. This explanation is of course patently untrue. Certain of those 600 persons -- in addition to General Gandin and his entire staff -- were shot after their capture.

The history of what happened to the Italian garrison on Corfu is much the same. Again, the commander refused to abide by Vecchiarelli's surrender agreement, and fighting broke out, with disastrous consequences for the Italians. Lanz estimated German losses during that action at about 250 and Italian losses at about 1000 men. His own reports, however, indicate that not only were all Italian soldiers on Corfu executed upon capture, but that 4000 other Italians were "killed or shot." Again, the small German and huge Italian losses make it quite clear that the greater part of the Italian losses were suffered after their capture, and not during the course of the fighting. Lanz himself remembered and admitted that the island's Italian commandant had been executed in the same way and for the same reasons as General Gandin. But though the 1st Mountain Division was primarily

employed in the action against Corfu, the Ic officer of that division, Colonel Rothfuchs, had the temerity to state in an affidavit that he knew nothing at all about the execution of Italian officers on Corfu. The failure of Rothfuchs to appear for cross-examination by the Prosecution is understandable.

Lanz's excuses for his conduct toward his former Italian allies are as numerous as they are illogical and confused. He contends that if it had not been for his stand in the matter, more Italian officers would have been executed. To support this, he mentions having received a Hitler order instructing him to execute all of the Italian members of the Gandin division. He flatly refused, he claims, to even consider executing the Italian troops and, with an extra burst of magnanimity, even refused to execute any but the "guilty" officers responsible for the revolt. But this is not borne out by the facts. There is not a single notation in any of the reports or war diaries of Army Group E, the XXII Corps or any of its subordinate units to confirm Lanz's references to this imaginary Hitler order. The fact is that even the OKW order of 15 September 1943 limited punishment to those Italian officers who were "responsible" for fomenting the Italian resistance against disarmament.

Lanz also argues that Gandin had a duty to obey Vecchiarelli's orders to surrender. It has already been pointed out that Vecchiarelli's capitulation agreement was the product of bad faith on the part of the Germans, who knew that he had no authority to make it. When Gandin knew that his immediate superior was guilty of treason, he was not bound to tar himself with the same brush.

L Lanz further maintains that Gandin's actions were criminal because he fought, although there had been no declaration of war by Italy against Germany. It is difficult to see what is criminal about self-defense. These isolated groups of Italians committed no hostile act against the Germans. So far as the evidence shows, they were willing

to spend the rest of the war vacationing on the isles of Greece. They had shown no disposition to start a private war with the Wehrmacht. Every shot that they fired was to defend themselves against the German attack. This contention of Lanz is completely illogical. He is saying that if the Italians had initiated an offensive against the Germans after a declaration of war, he would have treated them better than he did when they waited for the Germans to attack them. In other words, he is saying that they should be penalized for their pacific behavior.

Then Lanz maintains that Gandin's actions were analogous to the actions of a prisoner of war who mutinied against his captor. This contention, obviously, is *ex post facto* rationalization. The concept of mutiny never entered the picture at all. The OKW orders never mentioned the word but talked only of shooting the Italian officers who resisted "as *franc-tireur*". Rendulic's own reports indicate that his treatment of Roncaglia was based upon the theory that Roncaglia's actions made him a *franc-tireur*.

Moreover, if execution after capture was the usual way of dealing with a mutineer, why did Lanz's reports mention that Gandin and his staff were being given "special treatment"?

There must be a relationship of superior and inferior before there can be an insubordination which leads to mutiny can take place. The Italian resisters were, of course, not subordinate to the German troops. If it be argued that Gandin had been guilty of mutiny towards Vecchiarelli, then naturally one asks why the Germans had authority to punish such mutiny and why no representatives of Vecchiarelli sat on the court martials which passed sentence upon Gandin and his staff.

Certain sections of German law were cited in support of the contention that the executed officers were mutineers. Those sections on their face are inapplicable to the Italian situation. They relate to acts of foreign civilians, not foreign military personnel. Moreover,

if those sections do have the meaning ascribed to them, they are flatly in contravention of the Hague Rules of Land Warfare regarding the criteria prerequisite for belligerent status.

But even if it is accurate to describe the Italian officers who resisted disarmament as prisoners of war who had mutinied, the German treatment of them was contrary to the treatment prescribed in the Geneva Convention. Every prisoner of war who commits a crime after he has been made a prisoner of war has a right to trial by his peers which, of course, was not the case with Gandin. Moreover, notice of his trial must be sent by the detaining power to the protecting power. Finally, no death sentence against such a prisoner of war may be executed until three months after notice of sentence is given to the protecting power. None of these conditions were fulfilled.

An addition 58 Italian officers were executed upon capture at Sarande for being instrumental in allying the units with the partisans. As to these men, Lanz admits that they were shot on the theory that they were francs-tireur. But, of course, they were not. Even Lanz conceded that they fulfilled all of the requirements of Article 1 of the Hague Rules for belligerent status. They were in full uniform, they were commanded by their own officers, they bore their arms openly and they obeyed the rules of war. Lanz now maintains that those 58 officers were shot by the 1st Mountain Division in violation of his own orders to the contrary. But even forgetting Lanz's previous treatment of Italian officers captured on Cephalonia and Corfu, and assuming that what he says is true, why was the commander of the 1st Mountain Division not punished for what was in this case unquestionable insubordination?

Lanz finally contends that his actions against the Italians were militarily necessary. It might be conceded that there were compelling military reasons for wishing to disarm the Italians. But how could there possibly be any military necessity for shooting those who resisted

after their capture and after their capacity for doing further damage to German security had been removed?

The true explanation for these killings was given by the highest judge at OKW headquarters, Dr. Lehmann, who instructed his subordinate judicial officers on 30 September 1943, that the execution of captured Italian officers on the basis of the Keitel directive of 16 September should be considered "a political measure without judicial competence."

Before leaving the Italian complex, we should mention that Lanz's corps headquarters issued an order not to take prisoners during operation "Verrat" (Treason) the code name for the German action on Cephalonia and Corfu, and that one company of the Brandenburg Regiment was to participate in the attack wearing Italian uniforms. Even Lanz had no doubt of the unlawfulness of that tactic. He now claims that the Brandenburg unit never actually got into action. If so, Lanz can claim no credit. He never lifted a finger to prevent the scheme from being carried out. Of course, he also says now that the "no prisoner" order was issued by a member of his staff without his knowledge and that he himself never knew until he got to Nuremberg of the intentions of the Brandenburg detachment. On other occasions, when it suited his purposes better, Lanz insisted that he was always alert to punish offenses of every nature within his area of command. Is it likely that a man so concerned with maintaining discipline within his corps would have no knowledge of an act of gross insubordination on the part of a staff officer and of the intended violation of international law by a unit attached for special purposes to his command?

Lanz, like the rest of his colleagues, says that he was violently opposed to the whole Nazi regime. He says that he was severely criticized by his superiors for the way he conducted the initial surrender negotiations with Cecchiarelli, as well as for his attitude towards the Italian resisters on Cephalonia and Corfu. But several months after the

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Italian affair, on 1 March 1944, General Doebr -- then Commander of Army Group E -- described Lanz as a "National Socialist leader personality" and stated that his annihilation of the Italian occupation forces on Cephalonia and Corfu were "frequently superior". In spite of the "difficulties" which Lanz was supposed to have made for his superiors during the Italian actions, Doebr stated that he was "above average" and "should be retained in his present assignment".

Lanz has the blood of an indefinite number, at the very least more than a hundred, innocent Italian officers and men on his hands. His actions during September and October 1943 were flagrant violations of fundamental revisions of international law which will always be remembered as one of the most shameful and unchivalrous chapters in the whole history of professional soldiery.

Mr. Fenstermacher will continue with the Prosecutions closing statement

THE PRESIDENT: We will take our afternoon recess at this time, a recess of ten minutes.

(A recess was taken.)

THE MARSHAL: The Tribunal is again in session.

MR. FENSTERMACHER: After dealing with the Italians, Lanz turned to his primary mission of defeating the partisans and maintaining order and security in the Epirus section of Greece. In the light of his prior performance, one could not expect his methods of keeping order among the Greek populace to be remarkable for their gentleness and forbearance. He resorted to the usual Greek technique of the mailed fist and the spiked club -- the execution of hostages and the wholesale burning of villages.

Lanz maintains that he opposed the whole idea of taking hostages and shooting men in retaliation for acts which were committed by others. He was careful not to say that he considered such methods unlawful but only that he objected to them for "purely humane reasons." His opposition was apparently not very articulate. On the 13th of September 1943 the subordinate 1st Mountain Division issued an order providing that "for every German soldier wounded or killed by insurgents or civilians, ten Greeks from all classes of the population are to be shot to death", and that this ratio was to "be carried out consistently in order to achieve a deterring effect." Lanz says he never heard of that order prior to seeing it for the first time here in Nuremberg. At the time that the order was issued, the headquarters of the XXIIInd Mountain Corps and the 1st Mountain Division were in the very same city. Lanz and General Stettner, the Division commander, lived and worked not more than two kilometers from each other in the Epirus capital of Ioannina. If you believe Lanz, he and Stettner never even discussed the matter of hostages.

Slightly more than a fortnight after the 10:1 order

of the 1st Mountain Division, Lanz himself ordered that "30 distinguished citizens (Greeks) from Arta", and "10 distinguished citizens (Greeks) from Filipias", be arrested and kept as hostages because of repeated cable sabotage in the area of Arta. The order stated that "for every further act of cable sabotage ten of the forty hostages would be shot to death." When it was pointed out to General Lanz on cross examination that he himself was adopting a 10:1 hostage ratio just a short time after the 10:1 ratio was announced by one of his subordinate divisions, he was most surprised. Could it have been coincidence or is this an indication that the 1st Mountain Division's order is based on a previous order issued by Lanz?

On 25 October 1943, the 1st Mountain Division issued another hostage order of which Lanz also claims to have been uninformed. In that later order, the hostage ratio was raised to 50:1 in the case of German losses and 10:1 "in case of a murder of a pro-German Greek or a Greek working for the Germans." Application for the actual carrying out of all such executions had to be cleared by the Division's IC officer through General Speidel who, as Military Commander of Greece represented the executive power. Although the 50:1 ratio was decreed even in the event of losses suffered by the Germans during band combat, Lanz has no recollection whatever of having issued, discussed or heard about this act of obvious illegality on the part of the divisional commander whose headquarters were in the same town with his own.

On direct examination Lanz insisted that he himself had issued but one hostage order, the one dated 3 October. Could he have intentionally forgotten the proclamation that he, as Commander of the German troops in Epirus, issued on 24 May 1944 for the seizure of hostages in Pogonion and their transport to Joannina, 40 kilometers away?

Lanz, of course, was reluctant to even hazard a guess at the number of hostages that were executed within the jurisdiction of his XXII Mountain Corps. Even the numerous documents were unable to refresh his recollection sufficiently for him to give a rough approximation. The situation report of the 1st Mountain Division to the XXII Corps, dated 24 October 1943, states that 58 hostages were executed for a surprise attack on German soldiers in the area near Paramythia. General Lanz felt that this particular report was confused with a report stating that 50 Greeks had been executed in retaliation for an attack upon German troops. But it was General Lanz rather than the Prosecution who was confused. An additional report shows that the 50 Greeks were executed on the 29th of September for an attack which occurred on the 20th of that month. From one of General Lanz's own file notes, dated 18 October 1943, more than three weeks after the "50 Greeks" incident, it appears that the 58 hostages were shot as a reprisal measure for six German soldiers. Again one notices, strikingly enough, an adherence to the 10:1 ratio which the 1st Mountain Division had decreed on the 13th of September and which Lanz himself had observed on the 3rd of October 1943.

Whether or not General Lanz now recalls it, his own corps reported to Army Group E on the 12th of December 1943, the execution of five hostages in retaliation for the killing of a "nationalist leader" in Korea. Earlier, on the 8th of November 1943, Battalion 79 reported to the 1st Mountain Division that eight hostages had been hanged in retaliation for the death of the interpreter Walter Jennewin.

That General Lanz had personal acquaintance with the execution of hostages is readily seen from the reports sent out in connection with

the attack upon his own convoy at the time of the Salming'er funeral. On the 3rd of October, 1943, the 1st Mountain Division reported that in retaliation for a partisan attack on the convoy making the trip from Joannina to Prevesa "4 hostages were immediately shot as reprisal" and that immediate counter-measures were being carried out. The same day the 1st Mountain Division reported "counter-measures in progress; up to now 4 civilians shot to death". Fascinated by the magical similarity of the figure four here involved, Lanz argues that hostages were not shot at all but that the persons killed were simply Greek partisans dressed as civilians who were killed in the course of the attack. A more reasonable explanation, however, is that immediately after the attack four innocent hostages were executed, and that later on four additional persons were shot as a counter-measure.

Though possessing no real knowledge of the execution of "security" hostages, Lanz has a slight familiarity with the use of "danger" hostages within his corps area. Though his 1st Mountain Division issued orders that hostages accompanying German lorries should be taken only from the central collection point, and though Lanz himself saw Greek civilians patrolling German roads under the threat of being executed in the event of attacks on German vehicles using those roads, he saw nothing unlawful about the practice, though he did feel that it was not a particularly good idea from a purely military point of view.

Lanz faced both ELAS and EDES partisans during the course of his stay in Epirus. He admitted that the testimony of the Greek witness Triandaphyllidis, General Zervas' ADC, was accurate when the latter testified that all EDES units wore insignia, that after March 1943, they all wore uniforms and that they were not guilty of any violations of the laws of war. Perhaps because no member of the ELAS units had testified, General Lanz felt safe in contending that those

units fulfilled none of the prerequisites of Article 1 of the Hague Rules. The many reports which mentioned the military organization of the EIAS forces, the names of their leaders, their armament and equipment, and their insignia, are authentic written testimony to the contrary.

But in spite of the fact that both of Lanz's opponents were entitled to full belligerent status, Lanz instructed his units to take severe reprisal measures in the event of attacks by those opponents against German troops and installations. The most significant order in that regard is Lanz's own order of the day issued after the death of Lt. Colonel Salminger, who was killed by a partisan road-trap, a method of warfare which outraged Lanz's own high standards of chivalrous warfare. In his order of 1 October 1943, he said that he expected that the 1st Mountain Division would "avenge this nefarious bandit murder... by a ruthless reprisal action with a circumference of 20 kilometers of the place where the murder occurred." On the stand Lanz insisted that by that order he was simply instructing the 1st Mountain Division to seek out and defeat the partisans in armed combat. Again one notices the resort to euphemism which has been so commonplace throughout this proceeding. That the troops read the same meaning into the order as did the Prosecution is evident from the reports which came back to the corps two days later. Though it was not likely that Salminger's attackers would loiter very long in the neighborhood, the division invaded and burned village after village.

Though there was not a single German loss at Akmotopok, the entire village was burned down and all its inhabitants shot. Lanz argues that when a report states "all inhabitants shot to death", it really means that all of the peaceful inhabitants had left the village prior to the entry of the German troops and that the persons actually shot down were not inhabitants of the village at all but simply partisans dressed as civilians.

One further example of the apparent unintelligibility of the language of the reports which came to General Lanz concerns the reprisal action carried out against the village of Korca. Though the report records that "all men capable of bearing arms were shot", Lanz claims that what really happened was that the civilian inhabitants of the village had taken up arms and were killed in the course of the fighting for the village.

Another example of this method of documentary interpretation can be found in an explanation given in a Lanz affidavit of a report which stated that "in the area southeast of Arta the 2nd Company of the 54th Artillery Battalion burned down two villages as reprisal for the activities of bands during the last few days." The affiant said that not two villages but only two houses were really burned. Is it the affiant or the report which is erroneous? The Court will recall the Lanz affiant who had General Lanz himself accompanying Lt. Colonel Salminger at the time the latter was killed. Even General Lanz had to admit that his affiant there had "made a mistake."

Lanz also was a faithful supplier of Greek labor for the war industries manned by Sauckel's slaves. A file note of the Commanding General of the XXII Corps for 18 October 1943, already alluded to in another connection, mentions that 160 persons had by then been deported for labor employment in Germany. The reason - they were "suspected of being members of bands and unable to show place of work."

Lanz admitted that Greek civilians were mobilized to do forced labor on Greek roads, but that, he argued, was beneficial not only to the Germans but to the civilian population as well. He denied, however, that any Greeks were used to construct fortifications. When he was shown on cross-examination a report, dated 1 March 1944, from the Steyrer Division to his Corps - a report which was received at corps headquarters on 2 March 1944 - stating that the evacuation of Sarande was in progress but that the male population would remain in Sarande for the time being and would be "brought up to work on

fortifications", Lanz had a unique seizure of speechlessness.

He also did his bit towards the "final solution" of the Jewish question. Though Corfu, following the Italian surrender, was entirely within his jurisdiction and control, he permitted a small SS detachment to forcibly evacuate almost 1800 of that island's Jewish inhabitants. Lanz admitted not only that there was no military necessity for such an action but, as he pointed out to Army Group E, that there was actually great danger that such a measure would hamper military defense preparations against an Allied attack. Though Lanz contended that he also opposed the measure for "reasons of humanity" no word of opposition on that ground appears in any of the communications which he had with Army Group E on the subject. Lanz conceded, at one point, that it was entirely within his power to keep the SS off the island, but at another stage of his testimony he said that he was wholly unable to prevent the measure and that the only thing he was able to do was to order his staff and his men to render no assistance whatever to the visiting SS men. But his men did assist the SS in carrying out the operation. As appears from the report which the German island commander sent to the XXII Corps, the army troops did the rounding up of the Jews and set aside barracks space in which they could be temporarily housed pending the arrival of ships taking them to their eventual destination. Such was the extent of Lanz's intervention against and his opposition to the fulfillment of the "purging of Europe".

Even prior to his arrival in Greece, Lanz had a record which was sufficiently black. When he received the Commissar Order as Commander of the 1st Mountain Division, he passed it on with the qualification that commissars would only be shot in combat. From that day forward he heard no more about commissars and he was sure none was ever executed by any of the units within his division. He had forgotten about the former proclamation which the XXXIX Mountain Corps had sent to the division on 29 July 1941. That proclamation,

addressed to the Ukrainian population, talked about the liberation "from the despotism of Jewish-Bolshevist elements" which the German troops had brought, and went on to say that "political commissars and members of the Red Army cut off from their units" were to be arrested without delay by the local mayors and delivered to the nearest German commander. Lanz pretended to have heard "for the first time here in Nurnberg" about such a distinction between political commissars and other members of the Russian Army.

He was even more astounded when he was shown an enclosure, dated 12 August 1941, to the Ic activity report of his very division. That enclosure was a graphic description of the capture of 18,000 Russian prisoners. The Court will recall the dramatic exposition of the singling out of a political commissar from the rest of the prisoners and his subsequent three-hour interrogation. Then, according to the account, he was "taken aside to a place from whence only the crack of the report" came back, "not, however, the faint cry."

General Lanz believed that that account was an entirely fictitious product of some war correspondent's imagination. He went so far as to suggest that the story was wholly inaccurate, a figment of a scriptwriter's brain intended for consumption on the homefront. Lanz could not explain how the correspondent knew such details as the insignia of the commissars, and their well-advised tactic of discarding it after capture in chance protection from the prescribed fate.

Lanz even went so far as to intimate that political commissars were not entitled to the protection of the Geneva Convention because they oftentimes shot their own troops to prevent desertion. What relevance this completely unsupported accusation has to international law is beyond our comprehension.

Nothing whatever can be said in mitigation of Lanz's shameful record. His Baedeker of crime is as complete as that of any of his colleagues.

General Helmuth Felny is no stranger to a method of thinking which holds military commanders responsible for the acts of their subordinates. In January 1940, one of his lesser officers in the air corps was forced down just inside the western boundary of Holland and Germany. The pilot had with him plans for the invasion of the Low Countries which was in fact to occur four months later. The plans were, of course, confiscated by the Dutch authorities. Felny, in spite of his exalted rank and his great reputation as a builder of the German Luftwaffe was held negligent and dismissed from his high post in the Luftwaffe.

Felny returned to his home in Brunswick and, with plenty of time to ruminate both about his fate and the destiny of western civilization, decided in September of that year to join the Nazi Party. A few months thereafter he returned to active service, but he denies that his membership in the party had anything to do with his reinstatement. If Felny was not, as he asserts, being an opportunist, he must have joined the party because he believed in its principles and the practical application of its ideology.

After heading what proved to be a still-born political-military commission in Iraq, an assignment on which he was sent by Hitler and Ribbentrop personally, Felny, in June 1941, was appointed Commander Southern Greece subordinate to Field Marshal List as Commander-in-Chief of the Twelfth Army and Armed Forces Commander Southeast.

When List went on leave during July and August 1941, Felny, as the senior ranking commander in the Southeast, was named his deputy. The practice of appointing the senior officer as acting commander-in-Chief during the latter's absence was standard and customary procedure in the German Wehrmacht and Felny is not at all reluctant to concede that that was the motivating cause for his appointment on the first occasion of List's absence.

If it is suggested that Felny was also named List's deputy during the interregnum between List's retirement to the hospital and Kuntze's arrival,

when the two mass executions at Kraljevo and Kragujevac took place, Felny is against the idea. There is nothing in the documents naming Felny as List's deputy at any time, and it therefore seems reasonable to assume that if Felny, as senior ranking commander, automatically became acting commander-in-chief of the 12th Army in July and August, the same thing happened in October 1941. Felny insists, however, that he was specifically named to the post of deputy in July 1941, and urges Foertsch's testimony as confirmation. This is an interesting testimonial interchange. Felny tries to extract Foertsch from his embarrassment by saying that the leadership of the 12th Army from October 16 until October 27 rested with the individual commander, and not with the Chief of Staff. The quid pro quo is that Foertsch must give Felny a hand by testifying that no specific appointment of Felny had been made. The very fact that Felny denies any knowledge of either of the three Serbian massacres which occurred in October 1941 is most indicative of his general credibility.

Shortly after he took over as List's deputy, Felny issued, on 29 July 1941, an order stating that death sentences for sabotage were to be carried out by hanging and that, additionally, "all means of intimidation which are customary with the residents of the country be employed". Felny, understandably enough, could not explain what he meant by "all other means of intimidation" - but in the light of such evidence, would it be too much to assume that he meant concentration camps, deportations, and the rest of the gamut of crimes which have been discussed so often in this proceeding? On the same day, Felny received a report that 100 Jews had been shot to death in Belgrade in reprisal for the throwing of a bottle of gasoline on a German motor vehicle four days earlier. Felny, of course, has no recollection whatever of the incident, though he admits that Foertsch, as a competent and dutiful Chief of Staff, must have informed him about it. On the 15th of August 1941, it was reported to the office of the Armed Forces Commander Southeast that the village of Skela had been burned and 50 "communists" hanged in retaliation for an attack upon a police car on the

previous day. Of such type were the incidents which occurred during the period General Felmy acted in Field Marshal List's stead.

After serving as Commander Southern Greece from June 1941 until August 1942, Felmy left Greece for a brief interlude in North Africa. He returned in June 1943 as Commander of the LXVIIIth Corps, a post he held until the evacuation of Greece in October 1944. Felmy's major task, of course, was the combatting of the Greek partisans. Whereas the EDES partisans operated for the most part in General Lenz's territory, Felmy's major opponents were the ELAS units, the so-called "communist" group of Andartes. As early as 5 July 1943, the Military Commander of Southern Greece, then General Speidel, wrote a very comprehensive report on the nature and size and leadership of the ELAS organization. It was reported to be 40,000 strong, with all manner of weapons, an efficient general staff, and a centralized direction in the hands of English officers subordinate to the Allied Middle East Command with headquarters in Cairo. As might be expected from such a large organization, uniforms were worn by practically all and readily identifiable insignia by everyone. Though the last factor is extremely difficult for Felmy to accept, even his own Ic officer, Colonel Kleykamp, admitted that the Soviet star was uniformly worn.

Of course, Felmy gave the same lurid testimony regarding partisan violations of the rules of war as the rest of the defendants. In his case such testimony is particularly untrue. The war diary of his subordinate 1st Panzer Division shows that on the 2nd of October 1943 twelve hostages were seized and threatened with execution if missing German soldiers were not returned by the bands. The entry in the war diary for the following day states that the soldiers were in fact turned over. As if this example were not enough to support the Prosecution's contention that the partisans did not violate the Geneva Convention, there is not a single entry in the entirely translated war diary of Felmy's LXVIIIth Corps for the period January - June 1944 which mentions or even hints at the killing and mutilating of German prisoners by the partisans. If such practices were usual,

and as widespread as Felmy and his affiants have asserted, why is there not one indication in the whole war diary to that effect?

Felmy's partisan opponent was particularly powerful on the Peloponnesus peninsula, so powerful in fact that the German occupation there was utterly ineffective. In repeated requests to higher headquarters for additional troops, vernings appear that the northwest part of the Peloponnesus was entirely dominated by the bands "except for the coastal areas dominated by the Germans" and that "only a few coastal sections and the ports of Tripolis and Sparta remain in German hands." The partisans controlled more of the Peloponnesus than the Germans during 1943 and 1944.

To meet the challenge of the partisans, Felmy resorted to the firing-squad technique which had been characteristic of the German occupation since April 1941. "Danger" hostages were a common-place. The entry in the war diary for 5 June 1944 states that as a counter-measure for sabotage the railroad line Athens-Lamia, hostage coaches would be used. Two months later, on 5 August 1944, it was reported that during an attack on the railroad Corinth-Tripolis, cars were derailed and the "18 hostages taken along" shot to death.

But even more widespread than "danger" hostages was the taking and eventual execution of "security" hostages. In the use of the latter type, Felmy was an old and experienced master hand. When he was still Commander of Southern Greece, he reported that on 5 June 1942, "in reprisal for murders committed in the Messara region, 12 hostages were shot on 3 June 1942." The report also mentioned that in reprisal for a plot against the railroad track Liessia-Athens a German firing squad had that morning shot 8, and an Italian squad 2, hostages. Though more than one of these defendants had tried to place the blame on the Italians for reprisal measures carried out in Greece prior to Italy's surrender in September 1943, one of Felmy's own witnesses, the representative of the German Foreign Office in Greece, Dr. Gunther Altenburg, stated flatly that the railroad lines in and about Athens were completely in the hands of the Germans.

Felny refused to even hazard a guess as to the number of hostages executed by units of the LXVIIIth Corps while it was under his command. All Felny would say was that reprisal measures were not carried out for every hostile attack upon the German occupation power. When it was pointed out that the Loehr order of 10 August 1943 demanded that each attack or act of sabotage be retaliated for by hanging hostages and burning villages, Felny seemed insulted; he said that he was "not a high school boy" and had not been treated as such by General Loehr. He insisted that he had not been allowed a good deal of latitude by General Loehr in carrying out all orders. That was rather an unusual, not to say inconsistent, statement for one who makes superior orders an important aspect of his defense to advance.

Although Felny refused to estimate the number of hostages his corps executed, his witness, the Balkan "authority" Professor Stadtmueller, was not so laconic. A radical in matters historical but a conservative in things mathematical, he opined that between 1500 and 2000 hostages had been killed by the LXVIII Corps, a figure which he himself volunteered did not include the Greek lives lost in the Klissura and Distomon blood baths.

There were so many, repetitious and even contradictory, hostage orders that it was impossible for him to recall them individually, Felny said. He did remember receiving, through List, the Keitel directive of 16 September 1941, a copy of which he passed on to the Commander of Crete who was at that time subordinate to him in his capacity as Commander Southern Greece. Felny, always content to assume the lawfulness of orders emanating from his superior officers, saw nothing criminal about the hostage figures mentioned in the Keitel directive, and went so far as to assert that the directive was "necessary" at the time. For one who repeatedly insisted, following a party line which List and Kuntze had established, that Greece was quiet and peaceful until late 1943, Felny's assertion that the Keitel directive was a military necessity seems peculiarly incomprehensible.

General Felny, like General Winter, was unable to recall any orders mentioning individual hostage figures which he might have issued to his subordinate units. But the Tribunal will remember that on 9 December 1943, Winter, as Chief of Staff of Army Group E, addressed a conference of chiefs of staff in which he specifically stated that the minimum hostage ratio had become the maximum, namely, "1:50 if there are dead, 1:10 if there are wounded". Is it credible that Felny's Chief of Staff was not at Winter's lecture or that a corps commander of Felny's importance was not schooled on reprisal quotas? Felny's remarkable memory having been previously demonstrated in his direct examination, it is not easy to believe that he could have forgotten such figures.

Felny denies having himself issued a single hostage order, a statement which the testimony of the witness Willy Finger flatly contradicted. Shortly after the death of the German General Krech, Finger said that he saw posters, signed by Felny, which mentioned 100:1 and 50:1 retaliation ratios.

The hostage incidents which occurred within the area of the LXVIIIth Corps are so numerous that in total number of hostages executed, Felny's record puts him in fifth place behind List, Kuntze, Foertsch and Geitner. On 22 August 1943 the 1st Panzer Division reported that ten hostages had been seized in retaliation for the beating up of a corporal. The division asked and received the express permission of the corps to execute those hostages. A short time later, on 12 September 1943, Army Group South Greece which Felny then commanded, reported that ten Greeks had been hanged in retaliation for the death of a German soldier.

The number of hostage executions which took place in the three-week period between 25 November and 16 December 1943 is representative of the entire period during which time Felny commanded the LXVIIIth Corps. On November 20, "20 communists were shot to death in retaliation for an attack at Aigion"; on the 29th of that month 100 hostages were hanged in retaliation for an attack on the road Tripolis-Sparta; on 5 December the corps reported

that 50 hostages had been shot at Aigion; on 6 December 50 hostages were shot in retaliation for an attack on the railroad south of Tripolis; and on 8 December, in retaliation for an attack southwest of Gythion, 25 hostages were executed. During that short span of time 245 hostages were killed - 245 murders for which Felmy must answer.

It is difficult to single out for particular attention any one of the several atrocities which occurred during Felmy's tenure as commander of the LXVIIIth Corps. But in total number of persons killed, the butcheries and devastation which took place during "Operation Kalavritsa" takes first place. Twenty-four villages were totally destroyed and more than 1400 persons killed before German vengeance had run its course. Even Felmy admit that Kalavritsa was a German "excess", and "excess" which, oddly enough, the Army does not even try to attribute to the SS. But it was an "excess," according to Felmy, not because of the ratio of Greek to German dead but simply because the devastation and murder involved was so indiscriminate. It was because Kalavritsa was allegedly a nest of bands, and because 78 German prisoners had supposedly been murdered by those bands that General Felmy gave permission to General LeSuire, Commander of the 117th Light Infantry Division, to stage the whole reprisal action. Since the operation had previously been cleared with Felmy, it is no surprise that, even though now Felmy condemns the result, he did not reprimand LeSuire when the undertaking had been completed. Felmy tries to excuse his failure to dismiss LeSuire or even to instigate his court martial by admitting that the OKW would just not have countenanced such an action.

But a few days after the Kalavrittha enterprise, Loehr's order of 22 December 1943 effectuated radical change in German reprisal policy. In recognition of the unfavorable impact of reprisal measures upon the Southeastern political situation, fixed reprisal quotas were rescinded and Minister Neubacher was charged with German political leadership in the entire area. Since actions like LeSuire's were precisely the kind which were intended to be prevented in the future, it is more than likely that Neubacher would not have opposed any application on the part of Felmy, and his superiors, General Loehr and Field Marshal von Weichs, to have LeSuire replaced. But Felmy did not try to replace LeSuire: he recommended him for promotion to leadership of a corps, and in due course the promotion was made.

The severe reprisal measures taken by the LXVIIIth Corps continued unabated throughout the year 1944. It has been constantly emphasized throughout this case that the Prosecution's excerpts were one-sided and give a distorted picture of events as they occurred in Southeast. Felmy's completely translated war diary proves that suggestion to be unfounded. Even looking at all of the tactical details contained in the war diary, the reprisal measures stand out in full focus. On 17 January 1944, 20 communists were executed in retaliation for an attack upon an officer; on 7 February 1944, 3 villages and 100 communists were executed in retaliation for an attack upon an officer; on 7 February 1944, 3 villages and 100 communists were executed in retaliation for an attack near Skala, on 23 February 200 hostages were ordered executed in retaliation for 2 attacks. With respect to the last incident, General Felmy was eager to point out that from the war diary the number of German dead from those two attacks -- 24 dead, 19 wounded and 3 missing -- could be ascertained. Felmy seemed proud of the restraint displayed by his troops in this instance. On 11 March 1944 the war diary shows that in retaliation for

an attack upon a convoy German losses were 18 dead and 44 wounded. Two hundred people from the hostage camps at Tripolis, Sparta and Corinth were ordered executed in reprisal. Felmy admits that LeSuire asked and that he gave permission for the carrying out of that action, though he hastens to add that, "from what I have been able to gather from the Prosecution documents" not 200 but only 111 hostages were actually executed. According to the entry in the corps war diary, the executions themselves were to be carried out "by members of the Greek Volunteer Units under German supervision", an observation which will become particularly significant in the light of General Felmy's testimony regarding the executions carried out in retaliation for the subsequent death of General Krech.

On 27 April 1944, a German convoy was attacked. General Krech, Commander of the 41st Fortress Division and three others were killed, five German soldiers were wounded and two vehicles destroyed. The entry in the war diary of 1 May announced that in retaliation, "335 communists and suspected guerillas were shot", an apparent application of a 50:1 ratio for the persons killed and a 25:1 ratio for those wounded, plus 10 extra hostages shot for good measure. Felmy shifts the blame for this execution to the leader of a Greek "Volunteer" unit, a mythical Colonel Popagondinos, who, he claims, rounded up and shot 100 hostages. Felmy himself claims no knowledge whatever of the execution of an additional 200 hostages which were reported as having been executed in Athens in retaliation for the same attack.

In view of what has already been said concerning the relation of indigenous forces to the Wehrmacht, no extended statement need be made here on General Felmy's testimony, especially since the documents explicitly state that the executions by Greek volunteer units were done under German supervision. Moreover, the witness Finger completely exploded Felmy's explanation of this particular reprisal. Finger himself participated in the arresting of the 100 hostages executed on

the Peloponnesus in retaliation for the Krech attack, and himself drove one of the trucks which transported the hostages to the central hostage camp at Patras. The Tribunal will recall that Finger testified that the entire action was carried out by German troops, members of the 999th Infantry Division, and not by Greek units at all.

Felmy's professed ignorance of the execution of the 200 hostages in Athens as part of the same reprisal action is, of course, entirely understandable. Either Felmy or his colleague, General Speidel, Military Commander of Greece at the time, arranged that detail.

When there are no Italians or Greek quislings around on which to place responsibility for the crimes mentioned in the German reports, Felmy makes the old standby, the SS, the recipient of responsibility. But when it comes to liability for the activities of SS units in Greece, Felmy and Speidel have to be very careful, for in that regard theirs is a narrow gauntlet indeed. Felmy unwarily admitted early in his examination that the Higher SS and Police Leader for Greece was "officially and in the service regulations" subordinate to Speidel, and that the 18th SS Police Regiment received orders for its tactical commitment against the bands from Speidel.

Aware of Speidel's reaction to this and anticipating his own testimony to the effect that even though the 18th SS Police Regiment was operating within his corps area, it was not subordinate or responsible to him for tactical purposes, Felmy stated that reprisal measures had nothing to do with, and formed no part of, tactical operations. In the face of Felber's testimony that reprisal measures could not be divorced from tactical considerations, this unbelievable. Moreover, it is irreconcilable with the Loehr order of 10 August 1943 which expressly states that reprisal measures were matters of tactics.

Finally, General Speidel said flatly that reprisal measures did involve questions of tactics and that orders to take or not to take

reprisal measures were no less tactical than orders to attack a given objective or withdraw from a named position. Felmy and Speidel did, however, effect a compromise of their testimonial feud by throwing the blame for the SS reprisal measures on Army Group E, which has no representative here. We will not get entangled in the intricate web which they spun in order to reach this happy solution. It is plain that the SS regiment got its commitment orders from Speidel and among those orders were instructions concerning reprisal measures. The regiment itself, when it was committed within the corps area of the LXVIIIth Army Corps, was tactically subordinate to Felmy. At any time, he could have ordered the regiment not to take reprisal measures and could have punished the regimental commander for disobeying him. Felmy and Speidel are both responsible for the reprisal excesses which the 18th SS Regiment took during its assignment in Boetia and later on the Peloponnesus.

Only a few of those excesses need be mentioned here. On 1 April 1944, in retaliation for a raid by Greek "bandits" southeast of Levadia in which the regiment suffered 2 wounded, 10 hostages were executed. On 25 April 1944, in retaliation for an attack on a motor convoy, in which 2 officers were killed, and 1 officer and 4 men were missing, 50 communists were shot. On 28 April 1944, 60 additional communists, and on 10 May 100 more communists were shot in retaliation for the very same attack. In all a total of 210 hostages had been executed in reprisal for 7 German losses, a reprisal quota of 30:1.

The Distomen and Klissura incidents throw additional light, not only upon German reprisal excesses, but also upon the much discussed Army-SS disciplinary relationship. In what the German account itself characterized as the "blood bath of Klissura", 217 completely guiltless Greeks were killed and 27 wounded. Though Felmy was serving as Lochr's deputy in command of Army Group E at that time, 5 April 1944, he claims he never even heard of the Klissura affair. Minister Neubacher, however,

heard about it and wrote to Weichs that it was "a most serious infraction of an order of reprisal measures issued by the Commander-in-Chief Southeast with my agreement", a reference to the already referred to Loehr order of 22 December 1943. Felny advances the unconvincing explanation that Neubacher heard of the incident from Greek sources while his own sole source of information was the series of official reports which he received from the 7th SS Regiment which committed the crime.

In a parallel incident which occurred two months after Klissura, and which also involved the same 7th SS Panzer Grenadier Regiment, 250 to 300 Greek inhabitants of all ages were killed in the village of Distomon. Distomon, along with Kalavrittha and Klissura is the third excess to which Felny has confessed. But it was not because Distomon was an "excess" that General Felny became concerned. It was because the SS unit had given a false combat report on the affair, stating that the Greek dead had been killed in a combat rather than in a reprisal action.

After Felny's corps judge had concluded all of his investigations and it was proved beyond doubt that the SS company commander had violated not only every law of humanity but had gone beyond even the harsh Germany Army orders, the SS regimental commander requested of Felny "that the matter rest with the disciplinary punishment of the case" and that "further measures" not be "directed". Felny agreed to the suggested procedure. Now if Felny had no disciplinary jurisdiction at all over an SS unit, just why was his "permission" asked in the first place? And if he could take no steps whatever against an SS leader, why was he asked not to "direct further measures"? Apparently the SS commander was under the impression that Felny had complete authority in the premises. If Felny was as outraged by the actions of the SS as he now claims to have been, why did he consent to mere

"disciplinary punishment?" If he had no jurisdiction to act, why was he requested not to do so? Felmy admits that his hand-written note agreeing to the regimental proposal was "illogical" and that, strictly speaking, he should have written that he had no authority to act. Felmy's only explanation for his "illogical" action is that "sometimes one makes mistakes". But the same so-called mistake was made by Field Marshal von Weichs, who in his turn agreed to let the matter rest.

What is even more significant is that the protests of Minister Neubacher against the Distomon outrage were addressed not to Himmler, but to the Army Commander-in-Chief, Field Marshal von Weichs. Not only was the SS regimental commander, who certainly ought to have known better, misled concerning the matter of his subordination to the Army, but Minister Neubacher was similarly deceived. The immunity of SS troops from disciplinary measures imposed by the Army seems to be much clearer here in Nurnberg than it was in Greece three years ago.

Felmy is also implicated in the execution of the Commando Order. Though he cannot recall ever having received it -- under oath one must be certain of one's testimony, he points out -- he learned of it, because "one always learns about such things." Incidentally, we recall that List, the fifth ranking Field Marshall in the German Army, testified that he had never heard of the Commissar Order until he came to Nurnberg. Felmy did receive the Commando Order. An entry in the war diary of Army Group E for 15 March 1944 indicates that teletype instructions were sent to the LXVIIIth Army Corps emphasizing the importance of capturing and obtaining information from British commandos and of disposing of them in accordance with the Hitler order. On 18 July 1944, Army Group E reported to the Commander-in-Chief Southeast that one of the commandos wounded during a British Commando operation against the island of Calina, a Sergeant John Dryden, had been flown to Athens on 5 July to be handed over to the SD in accordance with the Fuehrer order. Ever since Speidel's departure from Athens in May 1944,

Felmy was in complete charge of all German agencies stationed and operating in that city. Can there be any doubt that this British sergeant was turned over to the SD through General Felmy's headquarters? Felmy, unlike his fellow defendants, was brash enough to say that he considered the Commando Order perfectly lawful.

Felmy also assisted in the work of the peculiarly-Nazi agencies of the Third Reich. His relationship to the Rosenberg detachment, which was subordinate to him for economic and disciplinary purposes when he was Commander Southern Greece in 1941, has already been touched upon. He believed that the Rosenberg units were simply confiscating subversive political literature, an activity in which he saw no harm. The fact that art treasures were also being looted and that literature written by Jews was the particular object of confiscation had apparently no significance at all in his appraisal of the lawfulness of the activity of Rosenberg's agents.

Only one reference to Felmy's slave labor activities need be mentioned. On 31 October 1943 the 1st Panzer Division reported to the LXVIIIth Corps that it had arrested about 3,000 persons who were going to be sent to the Reich for forced labor. Felmy, of course, pretends to have heard nothing at all about that action though he admits that he sent on to his subordinate units every order concerning deportation which he ever received from higher agencies. He blandly admits that he did not waste time on considerations of the legality or the illegality of orders which he received from his superiors.

Felmy relies in effect upon military necessity in defense of the reprisal measures which he ordered and which were executed by his units. But even his own affiants state that Felmy always made difficulties concernin reprisal measures because in his opinion "they cost more lives of German soldiers". His witness, Dr. Gunther Altenburg, stated that he, Altenburg, considered the German reprisal measures taken in Greece to be criminal, and that they were the motivating cause for his

application to Ribbentrop to be transferred from his post as representative of the Foreign Office in Greece.

More than 1400 innocent Greeks were killed at Kalavriitha, more than 200 at Klissura, and nearly 300 at Distomon. Three hundred and twenty-five hostages were killed in retaliation for the death of General Krech and several hundred more in the course of retaliations for German wounded in November and December 1943 and the first two months of 1944. Professor Stadtmueller's estimate of the quantum of Felmy's crime leaves no doubt of the diligence and industry with which he worked.

BY MR. FENSTERMACHER:

Mr. Rapp will continue with the Prosecution's closing argument concerning General Speidel.

BY MR. RAPP:

General Wilhelm Speidel described himself as a man set apart from his German colleagues in Greece by his interest and respect for the ancient culture of Attica. He was constantly torn, he says, by a conflict between his own ideals and those of Nazism. There is little doubt, however, where Speidel's true political faiths lay. As early as 15 March 1939, even before the outbreak of war, he was characterized by his then superior in the Luftwaffe, Albert Kesselring, as an officer "who incorporates in himself the ideals of National Socialism".

Speidel was in Greece continuously for almost two years. He served as Commander South Greece from September 1942 until August 1943 when, following the reorganization of the Southeast Command, he was named Military Commander Greece, a capacity in which he served until the end of May 1944.

He was not in Greece long before he executed his first batch of hostages. On 10 July 1943 he reported to the Commander-in-Chief Southeast that he had executed 15 hostages in Athens and 3 on the island of Salamis in reprisal for several sabotage attacks on the island's search light post. On the witness stand his excuse for this was that these attacks were all part of a centrally directed conspiracy against the Germans. The report itself, however, indicates that the attempts were sporadic and unsuccessful and constituted no planned threat to German security.

Speidel had no idea who the hostages were, how they had been chosen, or from whence they had been seized.

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Although he vividly remembered their execution, he could not say whether the hostages were from Athens or from the island of Salamis. Speidel of course denied that these particular victims were chosen from a hostage camp. At the time of the hostage executions the actual perpetrators of the attacks were still undiscovered. For all Speidel knew the unsuccessful saboteurs might have been British commandos. He admitted that the hostages had not been seized beforehand; that their names and addresses had not been published; and that no announcement to the population that the named individuals were being held as security against attacks upon a German installation at Salamis had been made. Speidel thus even violated the requirements prescribed by even those few German commentators on international law who say that hostages may lawfully be executed.

Speidel confessed to a second hostage execution while he was Commander Southern Greece. On 5 July 1943, he reported the execution of 10 hostages on the part of the Germans and 9 by the Italians, in reprisal for the explosion of a magnetic mine fastened to the bow of the Italian steamer "Citta di Savona" in the harbor of Piraeus. The only casualties from the explosion were 69 horses, but General Speidel did not feel that the execution of 19 guiltless individuals was an excessive or disproportionate retaliation. These hostages were executed even while investigations to ascertain the true culprits were still under way. The report mentioned that the mine might have been attached to the ship while it was at Patras. Neither Speidel nor anyone else can explain how the execution of hostages from Athens could possibly be expected to prevent sabotage actions several hundred kilometers away. In this case, too, he admitted that the hostages had been seized

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only after the attack had occurred.

One of the activities which took up part of Speidel's time was strike-breaking. In a move tantamount to pick out every tenth worker and threatening him with execution, Speidel forced the Greeks to remain at their jobs by taking hostages from their number. Following the execution of the 19 hostages in retaliation for the incident involving the "Citta di Savona", Greek labor staged a sit-down strike. Speidel dealt with that action by issuing a severe anti-strike decree, dated 27 June 1943, which threatened harsh reprisals, including the execution of hostages, if there were any additional strikes in the future.

The report of the Military Commander Greece, dated 18 March 1944, stated that partial strikes on railroads and in several plants at the beginning of that month were "suppressed by energetic military measures - 50 communists were shot immediately, while others who were arrested are awaiting their sentences." Speidel pointed out that at the time the 50 communists were actually shot, he was on leave in Germany. That is of no importance. When his deputy, General Pflugradt, ordered the executions, he was merely carrying out Speidel's prior decree, with which he was thoroughly familiar. Speidel himself admitted having sent all of his anti-strike directives to Pflugradt who as Commander of Administrative Sub-Area Headquarters 395 at Saloniki was directly subordinate to him.

Speidel has a peculiar theory of responsibility for acts ordered while his deputy, rather than he, was physically present at headquarters. He maintains that even if his deputy was effectuating Speidel's own orders, the deputy was acting upon his own.

Speidel's credibility is indicated by his entire

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disclaimer of knowledge of this incident, though the report was dated the day after he returned to his office. Apparently, the execution of 50 miserable "communists" was not of sufficient importance for him to have discussed it with his chief of staff or for it to have aroused his attention when he saw it mentioned in his own report.

From September 1943 until May 1944 General Speidel, as Military Commander, was given the task of maintaining peace, order and security in Greece. He assigned an area of security to the 18th SS Police Mountain Regiment and served as the channel through which tactical orders for the combatting of the bands in that area were given. Speidel pointed out on direct examination that since the Higher Police and SS Leader in Greece had the right to commit Evzone detachments in combat or for police raids, he had the right to order reprisals for losses suffered by the Evzones in such operations. On his own theory, Speidel is responsible for the reprisal excesses which the 18th SS Police Mountain Regiment committed.

It is for the reprisal measures which were committed by units subordinate to Speidel in the sphere of police functions, as opposed to tactical or combat tasks, however, that the Prosecution's case against General Speidel is largely based. The Higher Police and SS Leader for Greece, General Schimana, was in charge of the organization and training of the Greek police forces but it was Speidel who supervised their establishment, limited their size and was responsible in the last analysis for their performance. It is for the reprisal measures which Schimana took to avenge losses of German and Greek police throughout Greece, and to combat individual acts of sabotage in and around the city of Athens, that we hold Speidel liable. That

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severe measures of retaliation were taken is clearly evident from Speidel's own war diary. An entry for 30 November states that 19 communist hostages were shot for the murdering and wounding of Greek police and gendarmes; on 18 December 20 hostages were shot as a reprisal measure for Evzones murdered and wounded by communists; on 7 January 1944, 30 communists were shot in reprisal for the murder of one Evzone and 3 Gendarmes and for 36 attacks on Greek police since 16 December 1943; on 19 January 1944, 50 communists were shot as a reprisal measure for murdering 2 German police; on 11 January 1944, 10 hostages were shot in reprisal for attacks on two Evzones.

Speidel denies responsibility for these and the literally dozens of other measures taken by the Higher SS and Police Leader. He denies that Schimana was subordinate to him. But the standard order of procedure for the Higher SS and Police Leader in Greece states very clearly that that office was "subordinate to the Military Commander Greece for the period of its employment in Greece". According to that basic regulation Schimana's duties embraced "all duties which are incumbent on the Reichsfuehrer SS and Chief of the German Police in the Reich", a provision which Speidel maintains is a denial of Schimana's subordination to him but which the Prosecution asserts is simply descriptive of the type of functions which Schimana was assigned to fulfill. Were its meaning otherwise, the section making the Higher SS and Police Leader subordinate to the Military Commander would be meaningless.

Under that same regulation, Speidel was authorized to issue to Schimana such directives as were "necessary to avoid interference with Wehrmacht operations and duties", as well as directives which would "take precedence over

any other directives". Schimana, of course, was to receive certain instructions from the Chief of the German Police concerning the execution of his duties, instructions which Bach-Zelewski has testified were simply of a technical nature concerning such purely internal matters as promotions, awards, salaries and the like. Bach-Zelewski, who was Higher SS and Police Leader for central Russia, subordinate at the time to the Army Commander in whose area he acted, knows whereof he speaks when he says that the regulations issued to Schimana were the standard set issued to all Higher SS and Police Leaders.

Speidel insists that Schimana was responsible only to Himmler in police matters. That contention is not only at variance with the order of procedure issued to Schimana by Himmler, but is expressly contradicted by the standard order of procedure for the Military Commander Greece which Speidel himself received from the Military Commander Southeast, his superior General Felber. That directive provides for Schimana's subordination by making the Higher SS and Police Leader a member of the staff of the Military Commander Greece. General Felber who, as Speidel's superior, ought to know, stated that the regulations covering the relationship of the Military Commander Greece to the Higher SS and Police Leader for Greece were identical with those covering the relationship between himself as Military Commander Southeast and Meyssner, who was Higher SS and Police Leader for Serbia. The service instructions for the Military Commander Southeast indicate that his staff was identical in composition with the staff of the Military Commander Greece.

Meyssner, as a member of the staff of the Military Commander Southeast was, of course, subordinate to General

Felber..

There is no doubt that Felber could and did give him orders for the carrying out of reprisal measures. To give just one example: On 23 October 1943, Felber ordered the execution of 400 reprisal prisoners in retaliation for an attack in which 8 German and Bulgarian Wehrmacht and police members were killed and from which 2 German military police were missing. The Higher SS and Police Leader for Serbia was charged with carrying out the execution. If there was any question as to Meyssner's subordination to Felber, it was completely dispelled by the recent testimony of General Felber himself. He admitted that he gave orders to Meyssner for the retaliation of losses of German and Serbian police. If Felber, whose regulations were identical with those of Speidel, was able to give orders to Meyssner, then certainly Speidel was able to deal likewise with Schimana.

Schimana, of course, as Speidel well knows and indeed admitted, considered himself subordinate to Speidel. In fact, Speidel himself related that in October 1943 Schimana had asked and received permission from him to shoot 10 hostages. Why did Schimana go to Speidel if he was subordinate only to Himmler?

Dr. Gunther Altenberg, who asked Speidel on at least one occasion to stop a hostage execution, also testified that Schimana was subordinate to Speidel. Indeed, Speidel's own affiant General Winter, testified that Schimana was "personally subordinate" to Speidel, an expression for which Speidel had no explanation.

Even Speidel himself admitted that on at least one other occasion he had stated that in all questions concerning the use of police troops to maintain peace and order, particularly questions involving taking of retaliation measures for the death of German and Greek police, Schimana was subordinate to him.

By virtue of the Lochr order of 22 December 1943, territorial commanders - and Speidel had territorial and executive power in all of Greece - were permitted to order "reprisal measures for losses in the Air Corps, Navy, Police and the Organization Todt". Of course, Speidel ordered and approved the taking of retaliation measures for the death of German and Greek police. He himself testified to having been approached on numerous occasions by various Greek officials to prevent the execution of hostages. Why did such indigenous delegations come if they had not been told that Speidel had power and jurisdiction over such matters?

Altenberg testified that Schimana was an "approachable and understanding man" and even Speidel admitted that he was "reasonable" and "not the fanatic type of SS leader", both additional indications, if more were needed, that Schimana, junior by one rank to Speidel, was subordinate to the Military Commander Greece.

Speidel also had seven administrative sub-area headquarters, stationed in the large cities of Greece, subordinate to him. He feigned ignorance of reprisal measures which had been carried out by any of those agencies, but the documents are sprinkled profusely with examples. On 25 February 1944 Administrative Sub-Area Headquarters Tripolis reported that "50 hostages from the hostage camp Tripolis were shot to death on

23 February in reprisal for the murder of an interpreter; on 4 April 1944, Administrative Sub-Area Headquarters Larissa reported that for railroad sabotage, 10 kilometers south of Larissa, 65 'communists' had been shot to death at the scene of the incident; on 4 May 1944, the same headquarters reported that 25 Greeks had been hanged in reprisal for an attack on the railroad near Dexara; on 13 May 1944, Administrative Sub-Area Headquarters Corinth reported that 10 communists had been hanged in Patras in reprisal for an attack."

In spite of Speidel's disclaimer of knowledge, his seven administrative sub-area headquarters were the hub of the entire Greek reprisal wheel. Those units ran the hostage camps. On 18 December 1943, Speidel reported having to discontinue the erection of new camps for lack of the requisite number of security forces. Speidel's own war diary of March 1944 contains an entry for the 10th of March, 1944 which states that in reprisal for an attack on an expresstrain near Larissa, "100 active communists from the Saloniki and Larissa hostage camps were shot."

The much-quoted Loehr order of 22 December 1943 makes the relationship between the administrative sub-area headquarters and the troop units with respect to reprisal measures most clear. Before reprisal measures could be taken by troop units, the consent of the competent administrative sub-area headquarters had to be given. If no agreement could be reached, then the competent territorial commander who, for Greece, was General Speidel, had to decide. Loehr's order was nothing new. General Stettner, who was subordinate to General Lanz as Commander of the 1st Mountain Division, stated quite clearly in his 50:1 order of 25 October 1941 that application for the execution of reprisal measures had to "be made through the Military Commander Greece who represents the executive power."

Apparently, however, troop units and administrative sub-area headquarters did, on occasion, have trouble because of over-lapping jurisdiction in the matter of reprisal measures. One such dispute is apparent

from the activity report of LeSuire's 117th Light Infantry Division for the month of November 1943. The division reported that the execution of effective reprisal measures had come to naught because Administrative Sub-Area Headquarters 1042 had claimed, on the basis of a Speidel decree, that it had authority to execute such measures. The division was annoyed because, though the administrative sub-area headquarters insisted upon its jurisdiction in the matter, it did not have sufficient forces available to carry out reprisal executions in behalf of the Division. After rather extended negotiations, however - the report continued - the administrative sub-area headquarters "was persuaded to transfer to the division their obligations and duties regarding reprisal measures."

It was apparently this rivalry and competition for jurisdiction that prompted Speidel himself to issue his order of 29 November 1943 to his subordinate administrative sub-area headquarters. Speidel there ordered that if a troop unit had issued orders contrary to those which he had issued, representations were to be made to the troop immediately and, if the latter further insisted on carrying out its orders, then the administrative sub-area headquarters was to submit a report to him on the matter.

Under the arrangement set forth under the Loehr order, the administrative sub-area headquarters would furnish the neighboring troop unit with the requisite number of hostages the troop needed for its reprisal executions. Correspondingly, if the administrative headquarters needed firing squads to carry out its retaliatory actions, the troop operating in the vicinity were to oblige. As was also pointed out in the Loehr order, the organs of the Higher SS and Police Leader, along with SD detachments, were "likewise to participate in the selecting of reprisal prisoners and hostages."

Speidel tries to place the blame for the reprisal executions which were reported by his administrative sub-area headquarters on the troop and the SS units operating in the vicinity. The hand in glove relation-

ship, however, is too obvious for that explanation to suffice. And on cross-examination, several reprisal incidents were brought up which even the astute General Speidel could not attribute to the tactical troops or SS detachments. On the 3rd of April 1944, an entry in his own war diary states that in reprisal for an attack on the head of a Greek labor office in Trikkata, 4 communists were shot. On 10 December 1943, another entry noted the execution of 10 hostages in reprisal for the murder of Frau Mayer, the wife of a German civilian official. Even Speidel assumed that one of his administrative sub-area headquarters was involved when he came across that incident in the Prosecution's documents.

But then "by chance" an affiant wrote to him and reminded him that he had refused to permit reprisals to be taken in that instance. After having received the "chance" affidavit, Speidel presumed that units of the tactical troops and of the SS had arranged to carry out the reprisal. But in the entry in his own war diary for 7 December 1943, with which he apparently first became acquainted when it was submitted to him on cross-examination-- though the diary was among the documents sent from Washington - it is expressly stated that reprisal measures were "being initiated in retaliation for that attack." Throughout Speidel's war diary when reprisal measures were taken or ordered by the Higher SS and Police Leader that fact is always specifically stated. If a Schimane or a troop unit had had anything whatever to do with the shooting of these 10 hostages, the entry in Speidel's own war diary would have said so. It was not only Speidel who perjured himself on this incident; his "chance" affiant did so too.

Speidel further tries to disassociate his administrative sub-area headquarters from reprisal measures by asserting that their staffs were so small that they would have been unable to carry out such measures. But it was precisely for that reason that they were entitled to demand the assistance of troop units stationed nearby. Moreover, if what

Speidel says about the physical incapacity of his administrative sub-area headquarters were true, why, then, was he so concerned about passing on to them the 50:1 order which he testified he received from Felber sometime in October 1943. If his subordinate units were not able to carry out reprisal measures, why send them any reprisal orders at all. Speidel testified that before he passed on the Felber 50:1 order he added all reprisal executions carried out under it he first cleared with him. Speidel claims he modified the Felber order in this manner because he had "misgivings" about the order and because he felt that it was psychologically unwise as to technique for pacifying the Greeks. This particular Felber order, with Speidel's alleged limitations, has, strangely enough, never been found, Speidel's testimony concerning it, however, is just one further admission that such orders, rather than being militarily necessary, constituted military masochism.

Speidel further lent a willing hand to the slave labor program of the Third Reich. His attitude on the question of the deportation of Greek civilians was particularly interesting. He said there were no forced deportations; but that if there were, it was not his concern; but if there were and they were his concern, then they were not forced but voluntary. The Tribunal will, of course, draw its own conclusions from such equivocating testimony. But in order to give one further example of Speidel's credibility in this regard, brief reference should be made to his own report to the Military Commander Southeast. The report, dated 14 April 1944, stated:

"In March and up until 6 April 1944, a total of 1424 workers were sent to Germany. In the first quarter of 1944 a total of 2499 new workers were conscripted for the German armament industries."

Speidel attempted to translate his way out of the difficulty; he suggested that the word "conscription" should really be translated as "contracted". The Tribunal's interpreters, however, rejected Speidel's proffer of linguistic expertness.

If you believe his testimony, Speidel did his best to make the lot

of the Greek Jew much easier. An example of his good works in this regard was his confiscation of the fortunes of those Greek Jews who failed to comply with a directive of the Higher SS and Police Leader to report to their respective Jewish communities for deportation to the East. Speidel gives as his reason for the transference of those monies to the Greek "puppet" government his belief that the Jews would some day return to Greece whereupon the State would disgorge what it had held as trustee. Speidel's naivete regarding the German Government's attitude towards the Jews borders on the boundless. Though he was in Greece constantly from September 1942 until May 1944, he did not hear about the deportation of Jews from Salonika in the spring of 1943, nor did he know until his own report of 14 April 1944 was shown to him on cross-examination that during the period 23-25 March 1944, the sudden arrest of all Jews in Athens had been carried out by offices of the SD. Speidel maintained that he had no power or authority to intervene of the actions against the Jews of Greece though, of course, he, like all the other defendants supposedly abhorred such un-German conduct. Speidel's Pontius Pilate-like attitude, however, did not prevent him from interfering when it was a question of what he called "saving" the fortunes, rather than the lives, of the Greek Jews.

Speidel's defense is a conglomeration of military necessity and sentimentality. He apparently does not pleas superior orders because he denied having refused to disobey orders out of fear of a court martial. What is even more abject and cynical is his statement that he received the orders of his superiors as a matter of course and "in no instance" ever considered them "contrary to law or international law."

For all of his interest in philosophy, the arts, and the pursuit of the good, the true and the beautiful, Speidel read but failed to really understand the meaning of Goethe's words:

"He only earns his freedom and existence,
who daily conquers them anew."

Though he likened himself to Bryon and professed the instincts

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of a Winckelmann; he behaved like a satrap of Darius.

MR. RAPP: Mr. Fenstermacher will now read the conclusion.

CONCLUSION

These then are the wicked men and this the depraved record of their crime in five countries for four years.

Since the various aspects of the legal issues involved in this proceedings have already been stated in the Prosecution's two memoranda, there is no need here to tread that ground again. The defendants would have this Tribunal deny the right of a people to fight back against a temporary conqueror, no matter how flagrant his aggressor or how cruel the regime of his occupation. Such a result would surely encourage some future tyrant to make his bid for world domination. Moreover, it is not for the defendants now to complain of violations of international law which were allegedly committed against them. It was their own violations of international law -- the mass executions, exploitation, destruction -- to say nothing of the initial violation of Greek and Yugoslavia sovereignty -- which gave rise to the resistance which these defendants now contend was beyond the pale.

The rights and privileges of an occupier under international law do not accrue simply because a land is declared conquered and occupied. The occupation must be effectively maintained. It is precisely on that issue that the legal arguments of the defense on the unlawfulness of partisan resistance breaks down. One need not go into all of the details here. But the fact does remain that the initial conquest of Greece and Yugoslavia was not maintained. If what the defendants say is true that they could leave, at any given moment and for any given place, subdued the partisan opposition, one naturally asks why that was not done. The very fact that each of the defendants has testified to having loudly and continuously pleaded for troop reinforcements is in itself a complete admission of the military failure of the German occupation.

After the plenitude of documentary evidence submitted here,

it would be supererogation to set forth again all the reasons why the Greek and Yugoslav guerilla forces were entitled to recognition as lawful enemy belligerents. That they were, that they were recognized by the Allied forces as such, and indeed that these defendants themselves urged similar recognition upon their own government is much too clear to necessitate further argument.

The prosecution has also argued that the execution of hostages is unlawful per se. That fact is recognized not only by the specific statute under which this proceedings is brought, but by pre-existing, international law as well.

The defense has attempted to dispute our contention that Control Council Law No. 10 is a correct statement of existing international law on the hostage by the Allies during the last war. But none of the evidence which has been brought forward proves what it was advanced to prove. The rebuttal witness David Bernstein made the defense testimony regarding an alleged American announcement threatening the execution of hostages at a 200:1 ratio complete perjury, and the affidavit of Franz Carl Maier did likewise with respect to the supposed. --

THE PRESIDENT: Pardon me; it will be necessary to take a brief recess in order to --

MR. FENSTERMACHER: Put in more tape?

THE PRESIDENT: Put in more tape -- mechanical matters. We will take a brief recess.

THE MARSHAL: The Court will be in recess for five minutes.

(A recess was taken.)

THE MARSHAL: The Tribunal is again in session.

MR. FENSTERMACHER: The defense has attempted to dispute our contention that Control Council Law No. 10 is a correct statement of existing international law on the hostage question by introducing evidence of alleged executions of hostages by the Allies during the last war; but none of the evidence which has been brought forward proves what was advanced to prove.

The rebuttal witness David Bernstein made the defense testimony regarding an alleged American announcement threatening the execution of the hostages at a 200:1 ratio complete perjury and the affidavit of Franz Karl Maier did likewise, respect to the supposed 5:1 hostage order said to have been publicly posted in Stuttgart by the French occupation authorities.

The evidence indicating that four hostages were executed by French troops in the village of Metzingen in retaliation for the death of a French soldier is ambiguous and indefinite at best. The placard which was posted following that supposed execution of hostages stated that "those responsible" for the shooting had been apprehended and shot. It is certainly not clear beyond doubt that any hostages were ever executed by the French at all. Moreover, if hostages were really shot on that occasion, it was in flagrant violation of Section 21 of the French Army regulations which provides only for the taking and not for the execution of hostages.

The attempt to prove that the Control Council Law is an inaccurate statement of international law by demonstrating that the American Army considers the execution of hostages not to be unlawful met with a similar lack of success. The entire file of the American 6th Army Group on the question of the American attitude towards the order of the French General LeClerc in Strassbourg which provided for the execution of five hostages for each French soldier killed by snipers in that city is a complete refutation of the defense attempt. The LeClerc proclamation was in effect not more than twenty-four hours at most. As soon as American authorities heard of it, it was rescinded for the very reason that it was in violation of international law.

A supposed execution of hostages in the city of Markdorf was also alluded to. But in that case too the evidence of the defense is on its face irrelevant. One affiant stated that no hostages were executed at Markdorf but rather that German soldiers dressed in civilian clothes had been captured and dealt with obviously as spies.

It is apparent, therefore, that not one single hostage execution was proved to have been carried out by the enemies of Germany during the entire war. But even assuming for the sake of argument that there had been violations of international law on the part of Germany's opponents, that still would not destroy the validity of the law under which we are proceeding. It is a commonplace to say that two wrongs do not make a right. To assume that the organized planned and governmentally-authorized executions of hostages which the Germans committed can, even if individual, sporadic, unorganized and unauthorized hostages killings were carried out by the Allies, could rescind or make ineffective international law upon the subject is, of course, illogical in the extreme. If international law ceases to be such because of sporadic violations, there will never be any such law, no legal system could survive such a theory. Under the defense theory of how international law is made the criminal himself could prevent the enactment of the very law which would make his act unlawful. The criminal then, by his negative action, could in fact annul any attempt by the rest of society to make him responsible for his deed.

But even if the execution of a single hostage were not a crime in itself, the evidence of the numbers of hostages killed and the ratios employed which has occupied the attention of this Tribunal for these seven months would sustain convictions against each one of these defendants. The defense here has sought to avoid the application of hostages law to this evidence by advancing the theory that these executions are justifiable under the doctrine of reprisal. But not a single one of the criteria which govern the taking of reprisals was met in the case of these defendants. By their own testimony, the questions of the lawfulness of their measures was completely irrelevant. Every minor German officer was permitted to order reprisals that were not only completely disproportionate, but based solely on revenge as well.

Our interruption of the law with respect to superior orders and military necessity has also been set forth in great detail elsewhere. The number of cases in which the defense of superior orders has been held not to confer immunity from criminal responsibility are legion. And General Winter, a defense witness, gave the lie to the plea of military necessity when he told the conference of chiefs of staff on 9 December 1943 that if reprisal measures were to be made effective, then the "really" guilty had to be sought out, and that the execution of hostages and the levelling of entire innocent villages would merely bring about an increase in the bands. It is precisely because of the military stupidity of the heavy-handed policy that the Germans were eventually forced to withdraw from the Balkans.

There, then are the facts, the law and the men with which we have been concerned over this extended period. How they shall be punished for their ruthless offenses against humanity is to be decided by this Tribunal in its wisdom. It may be true that the defendants did not

each commit crime in the same degree or to the same extent. Murder is murder whether it be committed singly, by tens or by tens of thousands. It is no defense to Loysen that he did not kill on the same scale as List and Kuntze. Each executed commissar is still an open violation of the most fundamental precept in the soldier's code -- an enemy who has laid down his arms in surrender may not be killed because he wears a particular emblem on his sleeve.

If the Tribunal believes that comparisons between this case and others is instructive, there are many examples and precedents which merit examination. A number of the colleagues and subordinates of these defendants have had to answer for similar crimes or similar charges -- Loehr and Kuebler and Weidholdt in Yugoslavia, Brauer and Mueller and Andrae in Greece. Others have been called to very severe account on charges very much narrower than those which have been brought, and we submit, amply proved in this case. Field Marshal Kesselring and Generals Mackensen and Meeltzer were sentenced to death, and then reprieved to a life sentence, because of a single large hostage execution at a ratio of 10-to-1 in Rome in 1944 and because of certain general orders with respect to the treatment of Italian partisans which were in effect for only a short time and were not nearly as want only brutal as the orders issued and enforced by these defendants. Other generals have been convicted of capital offenses because of their responsibility for the killing of Allied airmen who had been forced down in Germany, and General Anton Doestler has been tried and shot for the execution of American rangers in compliance with the criminal mandate of the Commando Order.

The task of making the punishment fit the crime is the task of this Tribunal not of the prosecution; but the prosecution cannot say that it believes the action taken in these other cases to have been unreasonable or unduly severe, and we suggest that willful participation in a systematic and preconceived program of crime, such as has been proved in this case, is, from the standpoint of world society, a far more serious offense than responsibility for isolated or spasmodic criminal outbursts. Charity and

forgiveness are among the divine attributes of man, but they, like all other capacities, must be exercised with intelligence and discrimination or they lose their meaning. We must not allow false mercy here to insult the hundreds of thousands who lie buried in Greece, Yugoslavia and Norway because of what these men did; Justice must be wise and firm as well as merciful.

One might perhaps have been more moved to feel pity for their fate had any one of them shown the slightest sign of remorse or given the faintest indication of repentance for what they have done. But in explanation and excuse they have only pointed out the personal, national, and international tragedies which intruded upon their lives. They, all of whom served in the first World War, say that they returned to a milieu of hopelessness and collapse, that they were subjects to political, economic and social forces of crushing impact and titanic magnitude, and that they are the hapless victims and the whipped and irresponsible products of a confused people in a disturbed and bewildered world. It is this philosophy of emotional fatalism which has made their proffered excuses of individual and collective guilt so cowardly and contemptible.

Their fault, like Brutus', lay in themselves and not in their stars. It was their individual response to their own individual situations which marked their failure. It is not because they were soldier, nor because they have lost, but because they were not men, that we ask now that they be permitted to reap the full harvest of that which they so conscientiously sowed.

These men have disgraced themselves, so shamed their own profession and their country that it will be decades before the world will be able to think again in terms of the Germany of Schiller and Heine and Mendelssohn and Brahms. It is not their individual fates for which we now feel concern. Their power for evil has already been broken. None of them will ever lead the legions of the Wehrmacht again. But if what they have done is not branded as criminal if the myths they seek so desperately to perpetuate are not

clearly labeled as such; if the facade of starched respectability behind which they seek to hide is not disclosed -- then another generation of Germans may rise to revere them, accept their ethics, and say they did no wrong.

The real complainant at this bar is civilisation. Let its plea be granted, let those who would destroy it be punished, let its laws be upheld.

THE PRESIDENT: I take it that you have concluded your presentation of the argument on behalf of the prosecution?

MR. FENSTERMACHER: That is right, your Honor.

THE PRESIDENT: The Tribunal will be in recess until 9:30 tomorrow morning.

(The Tribunal adjourned until 4 February 1948, at 0930 hours.)